

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

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JUN 20 2018

Ralph K. Anderson, III, Special Circuit Court Judge S.C. SUPREME COURT

Appellate Case No. 2017-002102

Jermaine Mayweathers,

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

Dayne C. Phillips, Esq.
Price Benowitz LLP
1614 Taylor Street, Suite D
Columbia, SC 29201
(803) 807-0234
Attorney for Petitioner

Lindsey A. McCallister
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201
(803) 734-3970
Attorney for Respondent

VOLUME II OF II

PAGES 501-938

INDEX

VOLUME I (Pages 1–500)

TRANSCRIPT OF JUVENILE WAIVER HEARING HELD MARCH 18-19, 2009.....	1
ORDER GRANTING EXCLUSIVE JURISDICTION TO JUDGE ANDERSON.....	343
TRANSCRIPT OF THE TRIAL HELD SEPTEMBER 21, 2009.....	344

VOLUME II (Pages 501–938)

FINAL BRIEF OF APPELLANT.....	790
FINAL BRIEF OF RESPONDENT.....	803
COURT OF APPEALS OPINION NO. 2011-UP-59 (S.C. Ct. App. Filed December 9, 2011).....	825
REMITTITUR.....	827
APPLICATION FOR POST-CONVICTION RELIEF.....	828
RETURN TO THE APPLICATION.....	837
TRANSCRIPT OF THE POST-CONVICTION RELIEF HEARING HELD OCTOBER 7, 2013.....	843
ORDER OF DISMISSAL.....	889
SECOND APPLICATION FOR POST-CONVICTION RELIEF.....	901
RETURN AND PARTIAL MOTION TO DISMISS.....	908
TRANSCRIPT OF THE POST-CONVICTION RELIEF HEARING HELD AUGUST 28, 2017.....	916
Exhibit 1 (Petitioner’s Handwritten Letter to Henry M. Anderson, Jr., Esq.).....	925
Exhibit 2 (Letter from Anderson Law Firm, P.A.).....	927
CONSENT ORDER GRANTING RIGHT TO SEEK BELATED APPELLATE REVIEW PURSUANT TO <u>AUSTIN V. STATE</u>	928
INDICTMENT.....	935
SENTENCING SHEET.....	938

SW - D. WILLIAMS - DIRECT

1 bedroom, and right here would be the bathroom. The room
2 next to it would be my son's room. And then here's the
3 kit-- the living room, the kitchen, the large room and
4 then here's my bedroom on the other end of the house.

5 Q And that's -- you showed the bedroom with Willie
6 Gerido, correct?

7 A Yes.

8 Q Okay. Now I notice in this bottom room they had bunk
9 beds in that. Is that where the girls stayed you said?

10 A Yes.

11 Q And Child and K.P. would stay in this --

12 A This bedroom right here.

13 Q Little bedroom?

14 A Uh-huh.

15 Q Okay. Now when the girls left to go to visit their
16 respective grandparents did someone else come to stay with
17 you?

18 A Yes, Jermaine Mayweathers.

19 Q Okay. Now where did Jermaine stay or sleep or while he
20 was with you?

21 A In my daughter's room.

22 Q Okay. And that was for a period of time, correct?

23 A Yes, for a period of time.

24 Q Okay. Did the --were the little boys with you all the
25 time or did they --

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- 1 A No.
- 2 Q ---go visit their father?
- 3 A They went to visit their father's 'cause I wasn't quite
- 4 finished moving and everything that was supposed to be
- 5 placed in wasn't able to fit in this, my son's bedroom.
- 6 So I wasn't really finished moving in at the time.
- 7 Q So is it safe to say for a period of time it would have
- 8 been you and Willie and Jermaine?
- 9 A Yes.
- 10 Q Okay. And the little boys with their dad?
- 11 A With their father, yes.
- 12 Q Okay. And how long did that situation last where it
- 13 was just you, Willie, and Jermaine in the home?
- 14 A During, I would say, the weekend my stepmother, my
- 15 father, was doing a gathering at their house and I went to
- 16 go pick up my children that Sunday.
- 17 Q But what I'm asking you, was it about a week or two
- 18 that y'all stayed together just the three of you or?
- 19 A Oh, it was about three weeks to a month.
- 20 Q Okay.
- 21 A Yes.
- 22 Q All right. And so after that three weeks to a month
- 23 period is that when the boys came back?
- 24 A Actually, my daughters and my sons came back ---
- 25 Q Okay.

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1 A --with us to the house.

2 Q All right. And how long did everybody stay together at
3 the house?

4 A Until Tuesday if I'm not -- Tuesday 'cause I was off on
5 a four day period.

6 Q Okay. Tuesday of the week that Child ---

7 A Yes.

8 Q --all this happened with Child ?

9 A Yes.

10 Q Okay. And then where did the girls go, to their
11 grandparents?

12 A Yes, uh-huh.

13 Q Where was everybody sleeping when y'all were together?
14 When all the girls and boys everybody, where was everybody
15 sleeping?

16 A Well, if I'm not mistaken, because the TV and game and
17 everything was in this room Jermaine was in this room. My
18 daughters and my sons, they bunked on the bunk beds.

19 Q Okay, all right. And when the girls left the boys, the
20 little boys still stayed in the bunk bedroom, correct?

21 A Yes.

22 Q And Jermaine used this bedroom?

23 A Yes.

24 Q Now let me ask you, according to the drawing here was
25 there any bed in this middle bedroom?

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- 1 A No. The only thing that was in this bedroom was a
2 stand that the TV sits on, the TV, the container with
3 clothes in it, and clothes in the closet.
- 4 Q Was there a mattress on floor or a pallet of that slept
5 onor?
- 6 A He made a pallet I would, per se, with blankets.
- 7 Q All right. But was there any air mattress or anything
8 or?
- 9 A No.
- 10 Q But it was just a ---
- 11 A A pallet that he made.
- 12 Q Okay, very good. On the 25th on the day that
13 everything happened to Child you got up that morning,
14 correct?
- 15 A Yes.
- 16 Q What time did you get up, ma'am?
- 17 A I'm not exactly certain, but I know it was near 8:00
18 'cause we kind of stayed up late so I slept a little
19 later.
- 20 Q Where were you working at the time?
- 21 A Where I'm currently at now, Holiday Inn Express.
- 22 Q So you're still working there?
- 23 A Yes.
- 24 Q Okay. And what time did you--
- 25 A My normal shift started 8, from 8 to 4.

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1 Q Was it a normal shift that day?

2 A Yes.

3 Q All right. So what time did you leave this Gilbert
4 Drive address to get to where you were?

5 A A little after eight.

6 Q Was this motel, Holiday Inn Express, where is it
7 located?

8 A On Radio Drive near the civic center.

9 Q Okay, near the civic center.

10 A Yes.

11 Q What did you do? Did you check on the boys before you
12 left?

13 A Well, I was woke by my sister calling me about my aunt
14 that had passed so I was on the phone walking throughout
15 the house talking to her trying to find out what was going
16 on with that while I was getting dressed. On my way to
17 get ready to walk out the door, like I always do with my
18 kids, I go check on them 'cause they're asleep. And

19 Child was in the bottom bunk of my daughter's bedroom.
20 And when I went and checked in Jermaine, K.P. was on
21 the pallet -- well, in another pallet. He had been on the
22 floor with Jermaine. And I woke Jermaine up and let him
23 know that I was getting ready to leave and I'd see him
24 when I get home.

25 Q Okay. Did -- was everything okay when you'd gone?

SW- D. WILLIAMS-DIRECT

- 1 A Yeah, everything was fine.
- 2 Q Okay. Let me ask you something. There --was there a
- 3 TV in this middle bedroom where they made these pallets?
- 4 A Yes, uh-huh.
- 5 Q And which TV would that be in this drawing?
- 6 A This small TV right here which was my son's TV.
- 7 Q And was that TV in this middle bedroom when you left
- 8 that morning?
- 9 A Yes.
- 10 Q Okay. Was there another smaller TV in this bedroom --
- 11 A Yes.
- 12 Q ---as well, Ma'am?
- 13 A Uh-huh.
- 14 Q Did you say that there was also a dresser in one of
- 15 those bedrooms?
- 16 A Yes.
- 17 Q Which one? Which one?
- 18 A A stand.
- 19 Q A stand?
- 20 A In my son's bedroom.
- 21 Q Okay. So that's not indicated on this drawing?
- 22 A No.
- 23 Q Okay. And this TV would have been in the bedroom?
- 24 A Yes.
- 25 Q Now what about this large TV, is that -- was that

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1 working or?

2 A Well, the back end of the TV came off in the move where
3 you screw the cable on.

4 Q Right.

5 A So every room in the house had direct TV, but that
6 television didn't have any direct TV on it because of the
7 cord on the back.

8 Q So if you wanted to watch direct TV you'd have to bring
9 another television in to that room to do that?

10 A Yes, if you wanted to watch TV in the living room.

11 Q That's right.

12 A Yes.

13 Q Okay, all right. Have a seat. I think that's all I
14 have for this diagram.

15 A (Witness complies.)

16 Q Now I want to take you back to the night before, all
17 right. Can you tell us on Thursday, July the 24th, what
18 y'all did that day leading up to the early morning hours
19 of July 25th.

20 A I cooked and we watched movies and --

21 Q Well, let me ask you, did you go to work on the 24th?
22 Were you on shift that day on Thursday 24th?

23 A Yes.

24 Q Was it a normal shift the day before, 8 to 4 or?

25 A I would say so. My normal shift is 8 to 4 unless the

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1 girls have to stay over, and by me being supervisor I have
2 to stay till they leave. So it was a little, maybe a
3 little after four when I left work Thursday.

4 Q Okay. And when you got home what did you do on the
5 24th?

6 A Well, I -- when I first walked through the door my son,
7 like he normally he does, he greets me at the door,
8 Child and he has a bump on his head.

9 Q Where -- if you can point on your head, where was it,
10 on the left side here or was it on the right side?

11 A I really can't -- I can't -- could have been on the
12 right. I'm really-- I really can't remember.

13 Q Okay. And did you ask him how he got that bump?

14 A Yes. Before I went to my bedroom I seen some back of
15 the house where my son's bedroom was where Jermaine and
16 K.P. was playing at. And before I could get it out of
17 my own mouth what happened Jermaine said that the three of
18 them was in the room playing, and Child had sat on the
19 bunkbed.

20 Q Did -- was Child complaining about the bump on the
21 heador?

22 A No, I asked him was he hurt, and you know, how he felt.
23 He was fine.

24 Q Did you give him any Tylenol or --

25 A Yeah, I gave him some Tylenol just to try to make sure

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1 that he didn't get a fever if something was to happen.

2 Q Okay. Was Child feeling -- did he complain of any
3 illness, cold, or anything of that nature?

4 A No.

5 Q All right, okay. How would you -- how would you
6 characterize your son Child ? Was he a rambunctious
7 little fellow?

8 A He was one of them happy go-lucky children. He was
9 always happy, playing, never a dull moment with Child

10 Q Okay, all right. And I'm sure would you say he had his
11 share of little kid mishap?

12 A Yes.

13 Q Falling and that type of thing?

14 A Yes.

15 Q Okay. And do you recall some of the things that
16 happened to him?

17 A Yes. Some of the things that scared me actually.

18 Q Goahead.

19 A One incident I think he maybe had been two years old
20 where one of my best friend's son around the same age as

21 Child picked up a object off the coffee table like a
22 glass, whatnot, and threw it and when he threw it my son
23 was in the path and it had grazed him on his right side.

24 Q Right.

25 A And he immediately started bleeding so me and my oldest

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1 daughter rushed him to the hospital.

2 Q Okay. And anything else of that nature that might have
3 happened during that time?

4 A When we stayed in the — on Morning Glory Drive?

5 Q Right.

6 A They was outside playing and a neighbor's son swung
7 either a stick or a bat and hit Child somewhere right
8 up in the eye. And he had to get stitches. I had to rush
9 him to the hospital.

10 Q So every time he had kind of one of these mishaps you'd
11 rush him to the hospital; is that correct?

12 A Yes.

13 Q Okay, you never —

14 A No. No.

15 Q And I take it the same thing would apply to the other
16 children ---

17 A Yes.

18 Q —in your house?

19 A Yes.

20 Q Some of the girls might have had things like that
21 happen to them as well?

22 A Yeah, I take them to the hospital.

23 Q All right, okay. Now when you got home you cooked and
24 you stayed up?

25 A Yes.

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- 1 Q And that would be all five of you at that point? That
2 would be —
- 3 A Yes.
- 4 Q Let me guess, or say it, Willie?
- 5 A Yes.
- 6 Q Jermaine?
- 7 A Yes.
- 8 Q Yourself and the two boys?
- 9 A Yes.
- 10 Q And you stayed up on the 24th to the early morning of
11 the 25th watching movies; is that right?
- 12 A Yes. We actually watched two different movies that
13 particular night.
- 14 Q And you recall what they were?
- 15 A The first movie we watched was a American Crime.
- 16 Q Okay.
- 17 A And at the time it was mainly me, Willie, which I call
18 Peanut, Jermaine, and K.P. Child in the room with
19 us.
- 20 Q And then afterwards?
- 21 A We watched the last movie. It was Welcome Home Roscoe
22 Jenkins.
- 23 Q And that's with Martin Lawrence I believe?
- 24 A Yes.
- 25 Q And did Willie, or Peanut as you call him, stay to

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1 watch the whole movie or did he have to go somewhere?

2 A No. We - he actually sit and watch the whole movie.

3 Q And after the movie did someone come over the house to
4 to pick him up?

5 A Yes.

6 Q And do you know where Willie was going?

7 A No, I was uncertain.

8 Q Did he tell you he was going to be gone for a while?

9 A He mentioned something about Anderson but I was
10 unclear.

11 Q So he went and left; is that correct?

12 A Yes.

13 Q All right. When's the next time that you had
14 communication with Willie?

15 A When I got to the hospital and everything he had, I
16 done found out everything about my son, I called him.

17 Q And did you understand where he was at that time?

18 A He said he was on his way back to South Carolina.

19 Q So he had left the state of South Carolina?

20 A Yes.

21 Q Okay. And did you later find out that he had gone to
22 New Jersey?

23 A From what I heard. I mean, he didn't tell me out of
24 his mouth.

25 Q Okay, all right. And at that point everybody went to

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1 bed after the movie?

2 A Yeah, it was like in between one and two. It was late
3 'cause I looked at my watch 'cause I had to get up in the
4 morning so I sent everybody to bed.

5 Q Now you go to work, right?

6 A Uh-huh.

7 Q You come back to Gilbert Drive after your shift; is
8 that correct?

9 A Yes.

10 Q Okay. Do you recall about what time you came back,
11 ma'am?

12 A No.

13 Q Was it after 4:00?

14 A It was after 5.

15 Q It was after 5, okay. When you get home after 5:00 on
16 July the 25th, 2009, what occurs?

17 A I walk through the door like I normally do since
18 Jermaine been here. You know, how I cut a joke with him
19 here and here, and that's what I did, I walked in the
20 house. And I started to go to the back of the house
21 because I didn't see Child And he normally greets me
22 at the door every time I walk through the door. So all I
23 saw was Jermaine and K.P. sitting on the chair. And I
24 didn't see Child so I started to go to the back and
25 then he tells me -- what I thought he said was you have to

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1 take Child to the hospital. And I said, I have to take
2 him to the hospital so when I went to run to the back of
3 the house he said, no, Child already at the hospital.
4 So I ran out the door. I didn't worry about the door
5 being locked or nothing; I just ran out the door. And in
6 the car I asked him, I said, what happened. First thing
7 he told me is K.P. and Child was fighting and I
8 separated them. So I immediately turned to K.P. and I
9 said, K.P. I know that you would not fight on your
10 brother 'cause you know I don't allow y'all to do that.
11 And he said ---

12 MS. WINGARD: Objection. That would be hearsay.

13 THE COURT: That part is hearsay, Counsel, in terms
14 of the statements.

15 MR. JEPERTINGER: If I can explain.

16 THE COURT: Yes.

17 BY MR. JEPERTINGER:

18 Q You cannot say what K.P. told you ---

19 A Oh.

20 Q ---in the car, okay? You can say--you can tell us
21 what you said to K.P.

22 A Okay.

23 Q Okay.

24 A Well, that's as far as I say to K.P.

25 Q Okay, all right. At this point did you go to McLeod or

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1 Carolinas?

2 A I went to Carolinas first because when I was getting
3 ready to get into the car my phone rang and it was my next
4 door neighbor telling me that she was at the hospital with
5 my son. I thought she said Carolinas because that's the
6 first that's -- that the hospital near our house.

7 Q That's the closest hospital?

8 A Yes, so I went trying to find out about my son. And
9 she calls me again and said, no, where are you. I said
10 Carolinas. She said, no, come to McLeod. So I rushed to
11 McLeod.

12 Q And when you got there what did you observe, ma'am?
13 Take your time.

14 A Child laying on the table with tubes and things.

15 Q Did you have a chance to look at his body, ma'am?

16 A Yes.

17 Q What did his chest and legs look like, ma'am?

18 A I didn't try to observe. The first thing I did was
19 look at him to see if he was breathing 'cause as a child,
20 you know, when you have children asleep the first thing
21 you look at is either their stomach or chest to see if
22 it's going up and down. And I asked the doctor, I said,
23 well he's breathing, right? And he says, no, he's on a
24 respirator; he's not breathing on his own.

25 Q Let's move on to something else, ma'am. I know I'm

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1 just gonna ask you, do you recall seeing after that, did
2 you look at anything else on Child ?

3 A No, I wasn't. I couldn't look at him no more.

4 Q Okay, that's fine. Ma'am, let's go back-- how did you
5 -- let me ask you. Did you discipline your children
6 corporally? Did you spank them?

7 A Yes.

8 Q Okay. And what was your normal method of discipline of
9 your children, ma'am?

10 A I would get a belt and I would tell them to hold out
11 their hands and I would give them a couple of pops in
12 their hands.

13 Q Okay. Did you ever spank either K.P. or Child on
14 their torsos?

15 A No, no, never.

16 Q All right. If you recall did you have to spank them
17 that week?

18 A Yes, Wednesday.

19 Q Okay. Do you recall what you spanked them for?

20 A If I'm not mistaken they were running through the house
21 jumping on the furniture, and if I'm not mistaken
22 something fell so, and I told them repeatedly, you know,
23 stop running in the house. I don't like my kids running
24 in the house. You could be hurt. So I'm constantly
25 saying that in the house with boys so...

SW- D. WILLIAMS-DIRECT

1 Q Did -- and when you say you spank, once again, was it
2 on the hand?

3 A Right. They hold their hands out like this and I
4 spanked them on the hands.

5 Q Now I'm gonna show you what's been marked as State's
6 Exhibit 18 for identification. Do you recognize this
7 object, ma'am?

8 A Yes, that's my belt.

9 Q Okay. And normally where do you keep your belts in
10 yourhouse?

11 A Hanging in my closet on the hanger rack.

12 Q Okay. Do you ever leave them thrown on the floor?

13 A No. The only time I take my belts out is when I'm
14 getting ready to wear them.

15 Q Okay, all right.

16 MR. JEPERTINGER: And at this time, Your Honor, I
17 move State's Exhibit 18 into evidence.

18 THE COURT: What says Defense?

19 MS. WINGARD: Judge, I would object. I think it
20 would be premature. I don't think there's been any
21 connection to any injuries that Child may have
22 sustained.

23 THE COURT: I would overrule the objection and I
24 allow it in in regard to the chain of custody rule under
25 the exception called non-fungibility, a non fungible item.

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1 18 in evidence over objection. Rights are reserved;
2 rights are protected.

3 (WHEREUPON, State Exhibit No. 18 was admitted into
4 evidence.)

5 BY MR. JEPERTINGER:

6 Q Did you ever spank Child with this particular belt,
7 ma'am?

8 A No.

9 Q State's Exhibit 18?

10 A No.

11 Q When you got back from the hospital on later that day
12 or---

13 A That night.

14 Q —that night, I think your testimony was you left the
15 mobile home unlocked; is that correct?

16 A Well, I stormed out. Jermaine went back by the time I
17 got in the car and locked the door shut.

18 Q Right. Let me ask you this, did you find anything out
19 of order when you got home that —

20 A Yes. I found that — well, I actually didn't find it;
21 Jermaine did. I went to my room to go get clothes and he
22 told me, come here, and I saw that there was DVDs missing.
23 They stole part of a system. They went in my room so my
24 DVD player, my jewelry, things like that.

25 Q Were any televisions missing?

SW - D. WILLIAMS - DIRECT

1 A No, all of them was there.

2 Q Okay, all right. So you got burglarized while you were
3 at the hospital with your son?

4 A Son, yes.

5 Q Okay. After that happened did you have a chance to
6 speak to Investigator Lowder at the time -- it's Jenco
7 now. Did you speak with her at the hospital, ma'am?

8 A Yes.

9 Q Okay. And afterwards did you further speak with her
10 about this case?

11 A The day or --

12 Q Or did you just speak to her that one time at the
13 hospital?

14 A No, I spoke to her again.

15 Q Okay. And you told her everything you knew about
16 Willie being -- leaving the house at two in the
17 morning; is that correct?

18 A Uh-huh.

19 Q And you going to work that day?

20 A Yes.

21 Q All right. And Jermaine basically babysitting the two
22 small ones?

23 A Yes.

24 Q Okay.

25 MR. JEPERTINGER: Beg the Court's indulgence.

SW - D. WILLIAMS - CROSS

1 THE COURT: All right.

2 MR. JEPERTINGER: I think that's all the questions
3 that I have for this witness, Your Honor.

4 THE COURT: All right. Cross-exam.

5 **CROSS-EXAMINATION**

6 BY MS. WINGARD:

7 Q Ms. Williams, I am very sorry for your loss and I know
8 we have talked and done this before so you know that I'm
9 representing Jermaine, and in that regard there are things
10 that I need to ask you.

11 A Yes.

12 Q Jermaine had been at your house for approximately a
13 month prior to this incident; hadn't he?

14 A Yeah.

15 Q And he had been there with the little boys for
16 approximately four or five days; is that correct?

17 A Meaning?

18 Q Before this incident. I mean, he was there for some
19 period of time just with the three of you?

20 A Yes.

21 Q You, his dad, and Jermaine were there for about three
22 weeks?

23 A Yes.

24 Q Just the three of you?

25 A Uh-huh.

SW - D. WILLIAMS - CROSS

- 1 Q Then you said that your daughters came for a few days?
- 2 A Uh-huh.
- 3 Q So there were all of you there?
- 4 A Yes.
- 5 Q And then your daughters left?
- 6 A Yes. My daughters had come to stay.
- 7 Q All right. so it would have been then the two little
- 8 boys, Jermaine, you, and Willie; is that right?
- 9 A Uh-huh, yes.
- 10 Q Okay. During the time that Jermaine was with you, did
- 11 you have any concern about him being around your boys?
- 12 A No, not at the moment.
- 13 Q Not at all, not at that time.
- 14 A No, no.
- 15 Q So when you left on the morning of July 25 to go to
- 16 work there was no reason at all for you to think that
- 17 anything would happen to your boys —
- 18 A No.
- 19 Q —with Jermaine. In fact, you left Jermaine without a
- 20 telephone; didn't you? You left Jermaine at the house
- 21 with just the two boys?
- 22 A Yes.
- 23 Q You had a cell phone but---
- 24 A Yes.
- 25 Q —no land line or no home phone?

SW - D. WILLIAMS - CROSS

- 1 A No home phone.
- 2 Q So you took the cell phone with you; is that correct?
- 3 A Yes.
- 4 Q So there would have been no way for Jermaine to have
- 5 gotten in touch with you that afternoon or that morning if
- 6 he was having trouble with the boys or anything; is that
- 7 correct?
- 8 A Yes.
- 9 Q So he had to go --when he called 9-1-1 he had to go in
- 10 search of some way to communicate; is that correct?
- 11 A Yes.
- 12 Q And he had the responsibility that day to feed them.
- 13 You said that they were still asleep when --
- 14 A Uh-huh.
- 15 Q When they left, when you left?
- 16 A Yes.
- 17 Q And you awakened Jermaine; is that correct?
- 18 A Yes.
- 19 Q He was still in the bed?
- 20 A Yes, asleep.
- 21 Q Or he was still on the pallet?
- 22 A He was still asleep.
- 23 Q He was still asleep on the pallet. And you awakened
- 24 him and you said I'm leaving?
- 25 A Yeah.

SW - D. WILLIAMS - CROSS

- 1 Q But you did not awaken the two little boys?
- 2 A No.
- 3 Q So did Jermaine actually get up or did he remain?
- 4 A He responded. He said okay.
- 5 Q Just said okay and —
- 6 A Yeah, and then he laid back down.
- 7 Q All right. Now I was unsure about what you told me,
8 about what you told us, about where the little boys were
9 sleeping. Tell me again that morning where they were
10 sleeping.
- 11 A Child was on the bottom bunk where my oldest
12 daughter sleeps. And when I walked in my son's room
13 K.P. was — had done made him a pallet beside Jermaine
14 and Jermaine was on another one.
- 15 Q So the night before they hadn't gone to sleep like
16 that, the two —
- 17 A No.
- 18 Q The two boys —
- 19 A The two boys was on in the bunk bed.
- 20 Q Right. Two little boys to the other. So at some point
21 during the night K.P. then would have gone into the room
22 with Jermaine —
- 23 A With Jermaine.
- 24 Q —to sleep with him. There was a television in both
25 of those bedrooms at that time; is that correct?

SW - D. WILLIAMS - CROSS

- 1 A Yes.
- 2 Q Okay. Did you understand that Willie, or Mr. Gerido,
3 was going to be going out of town?
- 4 A Yes.
- 5 Q At what point before he left did you know that he was
6 gonna go out of town?
- 7 A When I came home from work.
- 8 Q So he told you early in the evening on Thursday that he
9 would be leaving?
- 10 A Yes.
- 11 Q But he told you he was going to Anderson?
- 12 A Yes.
- 13 Q And in fact, he went to New Jersey with some friends;
14 is that right?
- 15 A That's what I heard.
- 16 Q You did not expect him to be back all the next day; is
17 that correct?
- 18 A No, I didn't know what time he was coming back.
- 19 Q But you didn't expect him to be there the next day.
20 You thought he was going out of town.
- 21 A No, I expected him to be here when I got home from
22 work.
- 23 Q So you didn't discuss how long he was going to be gone?
- 24 A No.
- 25 Q Did he frequently take trips like this, Mr. Gerido,

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- 1 Willie?
- 2 A What you mean by frequently?
- 3 Q Well, I guess I should ask you how often would he just
- 4 go out of town like this on trips?
- 5 A I mean, he would go visit his family. It wasn't that
- 6 often.
- 7 Q Okay. Was he employed at this time?
- 8 A No.
- 9 Q So you're the only one in the house working?
- 10 A At the time.
- 11 Q And how long had you and Mr. Gerido been together?
- 12 A Three years.
- 13 Q And in fact, y'all still see each other; don't you?
- 14 A No.
- 15 Q Don't see each other?
- 16 A No.
- 17 Q Don't see each other at all now?
- 18 A No, not like that.
- 19 Q Do you -- I know you don't live together now, but do
- 20 you continue to have a relationship?
- 21 A What you mean by relationship?
- 22 Q Well, do you see him?
- 23 A I have seen him.
- 24 Q Do y'all still date?
- 25 A No.

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- 1 Q Okay. Don't stay together anymore?
- 2 A No.
- 3 Q When you see him what have you done?
- 4 A I may have said a couple of things to him.
- 5 Q Where would you have occasion to see him?
- 6 A Out in the open. Out in the open.
- 7 Q Out in the open, okay. So you don't have any intimate
- 8 relationship with him anymore?
- 9 A No.
- 10 Q And that ended on this as result of this incident?
- 11 A Yes.
- 12 Q Now prior to Jermaine coming and being with you -- one
- 13 more question about this week. The other days that you
- 14 had been at work this week --
- 15 A Uh-huh.
- 16 Q --Willie had been there.
- 17 A Been where?
- 18 Q At the house.
- 19 A At my house?
- 20 Q Right.
- 21 A No.
- 22 Q Now I might have confused you. The week of this
- 23 incident.
- 24 A Oh.
- 25 Q Before?

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- 1 A Okay, I got you now.
- 2 Q Before Child was injured.
- 3 A Okay.
- 4 Q He was injured on a Friday or Thursday night.
- 5 A He was with us.
- 6 Q Willie was there with Jermaine and the boys when you
- 7 went to work earlier in the week.
- 8 A I went back to work Wednesday and he was there
- 9 Wednesday and Thursday.
- 10 Q So this would be the first day that Jermaine had the
- 11 sole responsibility for these little boys by himself; is
- 12 that correct?
- 13 A Yeah. He knew he was gonna watch them while I was at
- 14 work 'cause his father came back home.
- 15 Q But you didn't have any firm understanding of when that
- 16 might be?
- 17 A No.
- 18 Q Jermaine had come to visit you and the little boys and
- 19 I guess your daughters were there well at Christmas before
- 20 this so that would have been Christmas of 2007; is that
- 21 correct?
- 22 A Yes, him and his oldest brother.
- 23 Q And again, from that incident you had -- you were
- 24 comfortable with leaving him from the time that he had
- 25 visited at Christmas you saw no reason not to have him

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1 keep these boys?

2 A No, because his father was there at the time and so was
3 my other children.

4 Q Now Child is a handful

5 A What you mean by handful?

6 Q Well, you described him in your statement to
7 Investigator Lowder as hyper. You said he was hyper.
8 That's a term you used than K.P. Do you recall saying
9 that, that he was hyper?

10 A No, I don't recall it. I mean, I don't remember.

11 Q Would that be a fair way to describe him as hyper?

12 A No.

13 Q So if you said that in the statement you don't recall
14 it?

15 A No, I don't remember.

16 Q I'm gonna ask you if you would read there and see if
17 that refreshes your memory. It's Page 24 of the
18 statement.

19 A As far as, you know, just as a normal five year old he
20 just like to roughhouse a lot.

21 Q And who---

22 A Lutcken.

23 Q Lutcken. And what is your response?

24 A "Hyper, hyper, just..."

25 Q So you said hyper, hyper, just. And then Lutcken says

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1 very hyper, and you respond?

2 A "Yeah, he was hyper than K.P. He was just full of
3 life, just that, that's how he was."

4 Q Okay. So he was constantly on the go; wouldn't you
5 say?

6 A Yeah.

7 Q Isn't that how you would describe him?

8 A Yeah, he was happy.

9 Q Yeah, just a handful?

10 A No, not a handful.

11 Q Not a handful?

12 A Just a happy little five year old boy.

13 Q You told Mr. Jeperfinger about two mishaps that he had
14 to give an example of how he was. Do you recall back in
15 April of 2004 where he had an abrasion to his scalp from a
16 bite. Do you remember that incident?

17 A Yeah, that took him to the emergency room.

18 Q And then you talked about in February of 2005 where he
19 had the laceration to his face. That's when the two year
20 old threw an ornament.

21 A Yes.

22 Q He -- apparently another. And he would have been about
23 two years old then too as well.

24 A Yes.

25 Q So he got that laceration. Do you remember about a

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- 1 year after that in February of 2006 where he got a
2 laceration to his right face and that was from he ran into
3 a coffee table? Do you remember that?
- 4 A No. When I walked in the door, like he normally do, he
5 runs up to me, hey momma. And he tripped and fell and hit
6 his right here on the coffee table.
- 7 Q Yes, ma'am.
- 8 A Yes.
- 9 Q Okay. And then you told us about where he had been hit
10 in the face with a stick. And then do you remember in
11 November of '06 he was taken to the emergency room because
12 he twisted his left foot and ankle?
- 13 A Outside playing.
- 14 Q And you told the --you brought him to the emergency
15 room and you said that he had fallen and that's how he had
16 got hurt?
- 17 A Yeah, outside playing.
- 18 Q Jermaine did a lot around the house when you asked him;
19 didn't he? He did what you asked him to; didn't he?
- 20 A When he wanted to.
- 21 Q And I remember you said that Thursday night before this
22 happened that he was doing the dishes 'cause you didn't
23 like to go to bed with dirty dishes in your house?
- 24 A No. And one of the things I gave him to do was to wash
25 the dishes after we eat.

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- 1 Q And I'm not saying that you shouldn't have done that.
2 I think a teenager in somebody's home should help, but he
3 did help around the house and he did do things for you?
- 4 A That's to be honest that's not the main -- that's about
5 the thing that he would do is wash the dishes 'cause I
6 clean up the rest of my house.
- 7 Q Did he -- was he able to cook?
- 8 A For himself when he hungry? I mean, what you mean?
- 9 Q Well, was he able to cook or fix stuff for the little
10 boys when he --
- 11 A Yes.
- 12 Q --had care? Did you discuss with him anything about
13 what he should do with the little boys as far as food and
14 what was --what was available?
- 15 A No, because when I went grocery shopping I buy anything
16 from frozen to where they can get their hands on to fix.
- 17 Q Did you have any discussion with him about proper
18 discipline?
- 19 A No.
- 20 Q You described Jermaine as a quiet young man. Is that a
21 fair way to describe him?
- 22 A Quiet, keep to himself, yes.
- 23 Q And you had to get the belt out after the boys on
24 Wednesday. Is that what you told us?
- 25 A Yes.

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- 1 Q But now you say you just limit any time you would
2 discipline them to slapping them or spanking them with a
3 belt on their hands.
- 4 A Yes, I — how ever many times I do that.
- 5 Q And you have never spanked them anywhere on their body?
- 6 A No, I haven't did that.
- 7 Q Never?
- 8 A No.
- 9 Q Okay. What are some of the reasons that you would
10 spank them?
- 11 A Misbehaving at school more than normal, acting up, not
12 listening, disobeying, those — that kind of things.
- 13 Q And one of the things you really got mad at them about
14 was playing rough and roughhousing and fighting; is that
15 right?
- 16 A No, I wouldn't get really mad at them. I would just
17 repeatedly tell them I don't want them running around.
- 18 Q But that's one of the things that you did not want them
19 to do?
- 20 A Is run around the house, yes.
- 21 Q And they did that?
- 22 A Yeah, they did that a lot.
- 23 Q And you had these bunk beds in the home, and that's
24 from as far as you know because I know you weren't home
25 when he got the goose egg Thursday —

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- 1 A No, it wasn't -- I wasn't home when he was hit.
- 2 Q But is it your understanding that it happened on the
- 3 bunk beds because they were jumping on the bunk beds?
- 4 A No, it wasn't that they were jumping on them. Jermaine
- 5 wa-- missed and hit Child head on the bunk bed.
- 6 Thursday he was the one who told me that they was playing
- 7 in the room, them three, and Child his head on the bunk
- 8 bed.
- 9 Q And did they -- did you question the boys about that?
- 10 Did they say that, in fact, they were -- that's how it
- 11 happened?
- 12 A I questioned K.P. and Child and that's what they
- 13 told me.
- 14 Q They were playing on the bunk beds and that's how they
- 15 got the knot?
- 16 A Yeah.
- 17 Q Did they get in trouble for messing up some blinds?
- 18 A No.
- 19 Q Were there -- were there messed up blinds?
- 20 A Yeah, in their room.
- 21 Q And how did that happen?
- 22 A I don't know. That I'm unsure of. I don't know how
- 23 the blinds got messed up, but I didn't ask them about the
- 24 blinds.
- 25 Q But you knew that there were blinds that were messed

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1 up?

2 A Yes.

3 Q And when did the blinds get messed up?

4 A I can't remember.

5 Q It was before Friday; is that correct?

6 A Yeah, it was messed up before Friday.

7 THE COURT: Ms. Court Reporter, just for the sake
8 of the record, what exhibits were marked in by agreement
9 beyond the ones we've identified thus far?

10 THE COURT REPORTER: For agreement?

11 THE COURT: I had gone through five or six
12 yesterday, and I understand some have been marked since
13 then; is that correct?

14 THE COURT REPORTER: Those are all I.D., Judge.

15 MS. WINGARD: These are just for I.D.

16 THE COURT: I.D. only?

17 THE COURT REPORTER: Those all are for I.D.

18 THE COURT: I.D. only? The rest are I.D.?

19 THE COURT REPORTER: Yes, sir.

20 THE COURT: All right.

21 BY MS. WINGARD:

22 Q I want to show you, Ms. Williams, what has been marked
23 as State's Exhibit 11. It's not been introduced into
24 evidence yet. But I would ask you, this is the damage to
25 the blinds?

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1 A There wasn't damage like that.

2 Q So that is not the damage to the blinds that happened

3 on---

4 A No. They were tore but they wasn't like that.

5 Q So this damage was done -- was this damage done when
6 your house was broken into?

7 A No. The blinds were already messed up previous, but
8 they got they messed up even more on that photo.

9 Q So this is how they looked after the incident on
10 Thursday?

11 A Yes.

12 Q And that was the same day that they got in trouble for
13 jumping on the bed and when Child got the knot on his
14 head; is that right?

15 A Repeat that again.

16 Q That was the same day that Child got the knot on his
17 head?

18 A The same day what?

19 Q The blinds, you said that that's how the blinds looked?

20 A No. I'm telling you that's just how they looked. They
21 were already tore, but from the photo they messed up in
22 the photo now than they were before.

23 Q Okay, so -- so that is not --

24 A Before Thursday.

25 Q That is not an accurate representation of how they were

SW-D. WILLIAMS - CROSS

1 messed up on Thursday?

2 A I don't -- I'm not sure how they was -- they wasn't --
3 they didn't look like that Thursday.

4 Q Okay. So do you know how they got messed up between
5 Thursday --

6 A No, I was at work.

7 Q --and when this picture was taken?

8 A No. I don't know when the picture was taken. I was at
9 work Friday.

10 Q Do you ever remember the blinds looking like this?

11 A No, not like that, but they were messed up.

12 Q Okay. All right, they were messed up. But they were
13 messed up the same day that Child got --

14 A No.

15 Q --the knot on his head?

16 A No.

17 Q When were they messed up?

18 A Long before that.

19 Q Okay. So that had-- the messed up blinds have nothing
20 to do with this?

21 A No.

22 Q Okay.

23 MS. WINGARD: Indulge me a moment.

24 THE COURT: All right.

25 BY MS. WINGARD:

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1 Q On Thursday when you got home before Child was taken
2 to the hospital on Friday, do you remember a discussion
3 about you were concerned enough about the knot on his head
4 that you didn't -- you wanted him to stay up late because
5 you knew that with head injuries it was important to
6 monitor people.

7 A No.

8 Q Do you remember that?

9 A No. When I found out that Shanquan -- when I knew
10 Child had the bump on his head I asked Peanut did he
11 know anything about it, and he said no, nobody came in
12 here and complained to him about the bump on the head.

13 Q But do you remember in your statement saying that you
14 were concerned about the goose egg and the bump on the
15 head and that he needed to be watched. Do you remember
16 that?

17 A No, I don't remember, but I mean, maybe when she was
18 asking me the question...

19 Q So you do remember, have some --

20 A I know from experience with my mothers and stuff when
21 you do fall don't let them go to sleep. I do know that.

22 Q Yes. And you said that you had-- that's what I'm
23 asking you.

24 A That's not the reason why I kept them up. He stayed up
25 'cause he wanted to watch TV.

SW - D. WILLIAMS - CROSS

1 Q Okay. But you told the investigator that you had that
2 knowledge and therefore you had a concern about that with
3 him?

4 A I didn't have any concern, but I know not to let -- and
5 then I didn't know how long before I came home that the
6 bump was there.

7 Q Now you were talking about where you had -- whether you
8 had seen the children undressed on Thursday evening. Do
9 you remember that conversation with the investigators?

10 A I think I do, yes.

11 Q And in fact, you said that you had not; didn't you?
12 That---

13 A About what?

14 Q You hadn't bathed them that night because Jermaine had
15 taken care of that. They had on clean clothes and they
16 didn't need --

17 A Actually Willie was there, and yes, they had them
18 washed.

19 THE COURT: Counsel, the last question of course
20 was about the children being washed. It's getting close
21 to absolute mandatory break time. Do you have much more
22 query? And I don't want to cut you off it. I'm just --

23 MS. WINGARD: No. Actually this is very, very
24 close to the end.

25 THE COURT: Okay, all right.

SW - D. WILLIAMS - CROSS

1 BY MS. WINGARD:

2 Q I would just ask if you would then read this. We're on
3 Page 26, end of the page. This is Katrina Andrews with
4 DSS.

5 A "Did you give them a bath Thursday night before he went
6 to bed?" "No, no, 'cause, um, they said he washed earlier
7 'cause they didn't have the same clothes on."

8 Q And it says -- then she says who says --

9 A Who said that?

10 Q And you said?

11 A Jermaine.

12 Q Jermaine. So Jermaine was taking care of them?

13 A No.

14 Q In a sense watching out for them?

15 A No, because his father was there Thursday with him
16 also.

17 Q But he's the one you relied on for knowing about their
18 being---

19 A No.

20 Q ---clean?

21 A No.

22 MS. WINGARD: I believe that's all, Your Honor.

23 THE COURT: Redirect.

24 MR. JEPERTINGER: I will, Your Honor, but you want
25 to take a break now?

1 THE COURT: Yes, break time. Let's take a break,
2 jurors. Please go to your jury room.

3 (WHEREUPON, the jury was removed from the
4 courtroom at 11:20 a.m., and a recess was taken.)

5 THE COURT: Bring the jury out please.

6 MR. JEPERTINGER: Your Honor, while they are doing
7 that, just for the matter of scheduling we got the
8 redacted CD. I would suggest that Ms. Wingard, myself,
9 and Mr. Richardson and Mr. Bell listen to it to make sure
10 that it's up to hoyle with the agreed upon redaction.

11 THE COURT: Okay.

12 MR. JEPERTINGER: When we have a chance to do that.

13 THE COURT: Over the lunch hiatus probably or not?

14 MR. JEPERTINGER: Well, that'd be fine because it's
15 going to be cut down from what it was.

16 THE COURT: From what we removed it shouldn't be
17 over 15 minutes.

18 I'm ready when they are.

19 THE BAILIFF: All right.

20 (WHEREUPON, the jury was returned to the courtroom
21 at approximately 11:40 a.m., and the following proceedings
22 commenced in open court.)

23 THE COURT: All right, everyone okay with the jury?
24 Everyone all right?

25 Ma'am, you're still under oath. You understand

SW - D.WILLIAMS - REDIRECT

1 that?

2 THE WITNESS: Yes, sir.

3 THE COURT: Redirect.

4 MR. JEPERTINGER: Yes, sir.

5 **REDIRECT EXAMINATION**

6 BY MR. JEPERTINGER:

7 Q Ma'am, Ms. Wingard in cross-examination asked you to
8 look at a photograph. While I'm doing that let me just
9 ask you in general in terms of these. I'm going to show
10 you what's marked as State's Exhibit 7-A and 7-B. Can you
11 tell-- can you identify 7-A and 7-B?

12 A This was our mobile home.

13 Q Okay.

14 THE COURT: Keep your voice up.

15 THE WITNESS: This was our mobile home.

16 THE COURT: Okay.

17 BY MR. JEPERTINGER:

18 Q This was the lot 43 over on Gilbert Drive?

19 A Yes.

20 MR. JEPERTINGER: Okay. I would move 7-A and 7-B
21 into evidence.

22 THE COURT: Any objection?

23 MS. WINGARD: No objection.

24 THE COURT: 7-A and 7-B now in evidence.

25 (WHEREUPON, State Exhibits Nos. 7-A and 7-B were

SW - D.WILLIAMS - REDIRECT

1 admitted into evidence.)

2 BY MR. JEPERTINGER:

3 Q And I'm gonna show you 11-A and 11-B.

4 This is the one you were referring to.

5 MS. WINGARD: I would have to object to that. She
6 said that was not how it looked on the day.

7 THE COURT: Establish the background in regard to
8 that photograph, Counsel.

9 BY MR. JEPERTINGER:

10 Q Can you identify 11-A and 11-B?

11 A That was my son's room.

12 Q Okay. Would this be what you refer to as the room with
13 the pallets in it?

14 A Yes.

15 Q Okay.

16 MR. JEPERTINGER: I would introduce 11-A and 11-B
17 as identifying the pallets room.

18 THE COURT: Any objection at this point in that
19 regard?

20 MS. WINGARD: No objection.

21 THE COURT: In evidence without objection 11-A and
22 -B.

23 MR. JEPERTINGER: Yes, sir.

24 (WHEREUPON, State Exhibit Nos. 11-A and 11-B were
25 admitted into evidence.)

SW - D.WILLIAMS - REDIRECT

1 BY MR. JEPERTINGER:

2 Q All right, I'm going to show you 10-A and 10-B. Can
3 you identify those, ma'am.

4 A That's my living room.

5 Q Keep your voice up please.

6 A My living room.

7 Q Okay. And the living room with the small television in
8 it, correct?

9 A Yes.

10 Q All right.

11 MR. JEPERTINGER: I would move 10-A and 10-B into
12 evidence at this time.

13 THE COURT: Any objection, Counsel?

14 MS. WINGARD: No objection.

15 THE COURT: 10-A and 10-B in evidence without
16 objection.

17 (WHEREUPON, State Exhibits Nos. 10-A and 10-B were
18 admitted into evidence.)

19 BY MR. JEPERTINGER:

20 Q And I will show you 9-A and 9-B here in a second.

21 MS. WINGARD: No objection.

22 THE COURT: 9-A and -B in evidence without
23 objection.

24 (WHEREUPON, State Exhibits Nos. 9-A and 9-B were
25 admitted into evidence.)

SW - D.WILLIAMS - REDIRECT

1 BY MR. JEPERTINGER:

2 Q Can you just tell us what 9-A and -B is please.

3 A The other part of my living room.

4 Q All right.

5 MS. WINGARD: No objection.

6 THE COURT: In evidence without objection.

7 (WHEREUPON, State Exhibits Nos. 8-A and 8-B were
8 admitted into evidence.)

9 MR. JEPERTINGER: 8-A and 8-B.

10 BY MR. JEPERTINGER:

11 Q And can you tell the jury what 8-A is please?

12 A That's the hallway in the house.

13 Q Okay. And 8-B please?

14 A A part of the kitchen.

15 Q All right. Thank you. Let me ask you, can you
16 identify photographs 6-A and 6-B.

17 A 6-A is the entire kitchen area and 6-B is where the
18 kitchen table sits.

19 Q All right.

20 MR. JEPERTINGER: Your Honor, I would move 6-A and
21 6-B into evidence.

22 MS. WINGARD: Judge, I need to be heard on both of
23 those.

24 THE COURT: Let me see them.

25 MR. JEPERTINGER: And in like regard before you

SW - D.WILLIAMS - REDIRECT

1 start looking at that, Your Honor, I would ask her to
2 identify 17-A and 17-B as well.

3 THE WITNESS: 17-B is part of the kitchen table and
4 floor and 17-A is the part where the dishes and sink is
5 at.

6 BY MR. JEPERTINGER:

7 Q Sink in the kitchen?

8 A Uh-huh.

9 MR. JEPERTINGER: I would also move those into
10 evidence as well.

11 THE COURT: Just for the sake of the report so
12 we'll have it on the record in a pristine fashion, just
13 simplistically what is the objection?

14 MS. WINGARD: Judge, those pictures were taken
15 several days after this incident as has been testified.
16 There's been an intervening burglary and I don't think
17 anybody can say that this is how it looked at the time
18 that this incident happened, and there's some other things
19 in there that I think are unduly prejudicial.

20 THE COURT: All right. Proceed to be more specific
21 with the background in terms of whether the photographs
22 do, in fact, have a true depiction of the area as it
23 existed immediately after this particular occurrence.

24 BY MR. JEPERTINGER:

25 Q Okay. Do these photographs accurately and fairly

SW - D.WILLIAMS - REDIRECT

1 portray the incident location after the incident?

2 A Yes.

3 Q Both on 6-A and 6-B?

4 A Yes.

5 Q And 17-A and 17-B?

6 A Yes.

7 THE COURT: They are admitted now over objection.
8 Rights are reserved subject of course to
9 cross-examination.

10 (WHEREUPON, State Exhibits Nos. 6-A, 6-B, 17-A,
11 17-B were admitted into evidence.)

12 MR. JEPERTINGER: Okay.

13 MS. WINGARD: Without objection.

14 THE COURT: In evidence without objection.
15 Numbers, Counsel?

16 MR. JEPERTINGER: Yes, sir. It would be 16-A and
17 16-B, 15-A and 15-B, 14-A and 14-B, 13-A and 13-B and 12-A
18 and 12-B.

19 THE COURT: All admitted without objection.

20 (WHEREUPON, State Exhibits Nos. 12-A, 12-B, 13-A,
21 13-B, 14-A, 14-B, 15-A, 15-B, 16-A, 16-B were admitted
22 into evidence.)

23 THE COURT: Proceed.

24 BY MR. JEPERTINGER:

25 Q Let me show you and let me go in numerical order this

SW - D. WILLIAMS - REDIRECT

- 1 time. 12-A and 12-B?
- 2 A Part of the living room.
- 3 Q 13-A and 13-B?
- 4 A 13-B is part of my son's room and 13-A is their
- 5 bathroom.
- 6 Q 13-B, is that the pallet room?
- 7 A Yes.
- 8 Q Okay. 14-A and 14-B?
- 9 A Is my son's room.
- 10 Q Both of the photos?
- 11 A Both of them photos.
- 12 Q Okay. 15-A and 15-B?
- 13 A Is part of my son's room, both of them.
- 14 Q And 16-A and 16-B?
- 15 A Is where I hung my son's clothes at in their closet in
- 16 the room in their bedroom.
- 17 Q Now that closet, was that a wardrobe or was a fixed
- 18 room? I mean, a fixed closet?
- 19 A No, it's a wardrobe.
- 20 Q Okay, very good. Thank you so much. I don't think I
- 21 have any other questions.
- 22 THE COURT: Recross.
- 23 MS. WINGARD: Reserving our objections.
- 24 **RE CROSS - EXAMINATION**
- 25 BY MS. WINGARD:

SW - D. WILLIAMS - RECROSS

1 Q You indicated that this was how the house looked right
2 after this incident; is that right?

3 A Yes.

4 Q I'm gonna show you State's Exhibit 17-A. And you had
5 indicated earlier that Jermaine had done the dishes; is
6 that right?

7 A That was Thursday night.

8 Q All right. But this incident then would have happened
9 on Friday?

10 A Yes.

11 Q Okay. And there are dishes in the sink?

12 A Yes.

13 Q Okay. When did you -- and these pictures were not then
14 taken until several days after. You did not take these
15 pictures, did you?

16 A No.

17 Q The Sheriff's Department took those pictures.

18 A I suppose so.

19 Q And I also direct your attention to 17-8. There is a
20 table leg?

21 A Uh-huh.

22 Q How long had that table leg been under there?

23 A I'm not sure.

24 Q For a long time?

25 A No.

SW - D. WILLIAMS - RECROSS

1 Q Because part of the chair was outside; wasn't it?

2 A Actually it was a whole chair outside.

3 Q Okay. And where is the rest of the chair that goes to
4 this table leg, do you know?

5 A I'm quite sure that's it under the table. It probably
6 came apart. The chairs were breaking apart.

7 Q So this, this would have just fallen off one of the
8 chairs?

9 A Yes.

10 Q Okay.

11 A This table.

12 Q Because you were having trouble with them regularly
13 coming apart; is that right?

14 A Yes.

15 Q And you don't know how long that had been under the
16 table?

17 A It ain't been under there that long.

18 Q Well---

19 A What you mean by how long?

20 Q I mean, given that these pictures were taken several
21 days after the incident, you had an intervening burglary,
22 you don't know when the chair leg got under there?

23 A I don't know when it fell off, no.

24 Q All right. Okay, thank you.

25 THE COURT: Anything further?

SW - R. SIMMONS - DIRECT

1 MR. JEPERTINGER: No, sir.

2 THE COURT: Thank you. You may step down.

3 Next witness please.

4 MR. RICHARDSON: Your Honor, the State would call
5 Reagan Simmons.

6 WHEREUPON,

7 **REGAN ASHLEY SIMMONS,**
8 having been duly sworn by the Deputy Clerk of Court,
9 testified as follows:

10 THE DEPUTY CLERK OF COURT: Please be seated.
11 State your full name for the record.

12 THE WITNESS: Reagan Ashley Simmons.

13 **DIRECT EXAMINATION**

14 BY MR. RICHARDSON:

15 Q Ms. Simmons, where are you currently employed?

16 A I'm a general manager at the Holiday Inn Express over
17 by the civic center.

18 Q Okay. And were you so employed last July?

19 A Yes, I was.

20 Q And is Debra Williams one of your employees?

21 A She is.

22 Q Okay. As part of your job do you keep up with who is
23 there what times?

24 A Yes.

25 Q All right.

SW - R. SIMMONS - DIRECT

1 MR. RICHARDSON: I need to pre-mark this document.

2 THE COURT: I.D. only?

3 MR. RICHARDSON: Yes.

4 (WHEREUPON, State Exhibit No. 19 was marked for
5 identification only.)

6 BY MR. RICHARDSON:

7 Q Ms. Simmons, is State's Exhibit 19, do you recognize
8 what this is?

9 A Yes. This is a time card from our Nova (ph) time
10 system which is our clock in-and-out system.

11 Q Okay. And are you the custodian or the keeper of those
12 records?

13 A Yes.

14 Q All right. What does that say in terms of Debra
15 Williams' comings and goings on the 25th of July, that
16 Friday?

17 A She clocked in at 8:28 a.m. and clocked out at
18 5:22 p.m.

19 Q All right. And that's the only record that you keep of
20 who is there when they're there?

21 A Yes.

22 Q Okay.

23 MR. RICHARDSON: Your Honor, I move to have this
24 Exhibit 19 entered into evidence.

25 MS. WINGARD: Let me -- I know you showed it to me

SW - W. SWEATT - DIRECT

1 and I — it didn't register. Without objection.

2 THE COURT: 19 in evidence without objection.

3 (WHEREUPON, State Exhibit No. 19 was admitted into
4 evidence.)

5 MR. RICHARDSON: That's all the questions I have
6 for you.

7 THE COURT: Cross-exam?

8 MS. WINGARD: No questions.

9 THE COURT: You may step down. Thank you very
10 much.

11 Next witness please.

12 MR. RICHARDSON: May this witness be excused from
13 her subpoena?

14 THE COURT: Suitable?

15 MS. WINGARD: Oh, sure, yes.

16 THE COURT: Have a nice day.

17 All right, Counsel.

18 MR. RICHARDSON: Your Honor, the State would call
19 Billy Sweat.

20 THE DEPUTY CLERK OF COURT: If you would, sir,
21 place your left hand on the Bible, raise your right hand.

22 WHEREUPON,

23 **WILLIAM SWEAT,**
24 having been duly sworn by the Deputy Clerk of Court,
25 testified as follows:

SW - W. SWEATT - DIRECT

1 **THE DEPUTY CLERK OF COURT:** Please be seated.

2 State your full name for the record.

3 **THE WITNESS:** William Sweat.

4 **DIRECT EXAMINATION**

5 **BY MR. RICHARDSON:**

6 Q Mr. Sweat, where are you currently employed?

7 A Florence County 9-1-1.

8 Q Okay. And where is that located?

9 A In Effingham at the Law Enforcement Center.

10 Q Okay. Is that the same place where the Sheriff's
11 Office is?

12 A Yes, sir.

13 Q Okay. And what do you do there?

14 A The operations manager.

15 Q So when a 9-1-1 call comes in what is your function,
16 what does your job entail?

17 A I basically oversee the center. We have dispatchers
18 that answer calls.

19 Q All right. Were you in this job last July?

20 A Yes, sir.

21 Q How long have you been doing it?

22 A Twenty years now.

23 Q All right. A 9-1-1 call comes in that law enforcement
24 wants to get a copy of, do you -- are you the one who
25 provides that?

SW - W. SWEATT - DIRECT

1 A Yes, sir.

2 Q All right. Also, as far as being -- keeping records of
3 what calls come in, dispatch times, so on and so forth, do
4 you keep records of that as well?

5 A Wedo.

6 Q Is that called a CAD report?

7 A Yes, sir.

8 MR. RICHARDSON: Your Honor, I need to have this
9 premarked for I.D. only.

10 THE COURT: 20?

11 THE COURT REPORTER: Yes, sir.

12 THE COURT: 20, I.D.

13 (WHEREUPON, State Exhibit No. 20 was marked for
14 identification only.)

15 BY MR. RICHARDSON:

16 Q I want to show what's been marked Exhibit 20. Can you
17 identify this document?

18 A It's a CAD incident detail from our computer aid
19 dispatch system.

20 Q All right. You would be the one who have custody and
21 control over CAD reports?

22 A Yes, sir.

23 Q All right. What does that CAD report tell you?

24 A We received a call on for assistance on the 25th of
25 July at 5:19 in the afternoon regards to a subject

SW - W. SWEATT - DIRECT

- 1 complaining of difficulty breathing.
- 2 Q Okay. And does that CAD report have on it who was
- 3 dispatched to the scene or when?
- 4 A Yes, sir. It has the unit number and the times.
- 5 Q And what time was the unit dispatched?
- 6 A 17:21 and 30 seconds.
- 7 Q So that would be 5:21?
- 8 A 5:21, 30 seconds, yes, sir.
- 9 Q Is that record an accurate depiction of records you
- 10 keep?
- 11 A Yes, sir.
- 12 Q At 9-1-1?
- 13 A Yes, sir.
- 14 MR. RICHARDSON: Your Honor, I'd move this into
- 15 evidence, item State's Exhibit 20.
- 16 THE COURT: Any objection?
- 17 MS. WINGARD: No objection.
- 18 THE COURT: 20 in evidence without objection.
- 19 (WHEREUPON, State Exhibit No. 20 was admitted into
- 20 evidence.)
- 21 BY MR. RICHARDSON:
- 22 Q When you get word from law enforcement that they wish
- 23 to have a copy of a 9-1-1 call do you provide that to them
- 24 on disk?
- 25 A Yes, sir.

SW - W. SWEATT - DIRECT

1 BY MR. RICHARDSON: Pre-mark this one as well.

2 THE COURT: 21?

3 THE COURT REPORTER: 21.

4 (WHEREUPON, State Exhibit No. 21 was marked for
5 identification only.)

6 BY MR. RICHARDSON:

7 Q Is it provided on disk like this?

8 A Yes, sir.

9 Q 21?

10 A Uh-huh.

11 Q All right. Once you give it to law enforcement that's
12 the last you see of it, right?

13 A Yes, sir.

14 Q Okay.

15 MR. RICHARDSON: Beg the Court's indulgence one
16 moment.

17 THE COURT: Yes.

18 MR. RICHARDSON: Your Honor, I'd move to have 21,
19 the disk, moved into evidence.

20 THE COURT: Any objection?

21 MS. WINGARD: I'm assuming it's the same one we've
22 heard.

23 THE COURT: It is?

24 MR. RICHARDSON: It is, yes, sir.

25 THE COURT: All right. We have pre-listened to

SW - W. SWEATT - DIRECT

1 that in regard to that tape and its content and so
2 assuming it is in the same state as on yesterday.

3 MR. RICHARDSON: Well, Your Honor, we have not
4 listened to this yesterday. This was the --

5 MS. WINGARD: Judge, I was provided a copy and I've
6 listened to my copy. I've not actually listened to that
7 one. But I feel certain that it -- I mean, I can't
8 imagine that Mr. Richardson would give me an incorrect
9 copy so.

10 THE COURT: It's in evidence.

11 (WHEREUPON, State Exhibit No. 21 was admitted into
12 evidence.)

13 MR. RICHARDSON: Your Honor, may we go ahead and
14 publish the 9-1-1 --

15 THE COURT: You may.

16 MR. RICHARDSON: --call?

17 THE COURT: All right, proceed.

18 (State's Exhibit Number 21 is played for the jury.)

19 MR. RICHARDSON: Your Honor, that's all the
20 questions.

21 THE COURT: All right, cross-exam.

22 MS. WINGARD: I have no questions.

23 THE COURT: You may step down. Thank you, sir.

24 MR. RICHARDSON: Your Honor, may he be excused?

25 THE COURT: Suitable, Counsel?

SW - K. QWYER - DIRECT

1 MS. WINGARD: Sure.

2 THE COURT: Next witness please.

3 MR. RICHARDSON: Your Honor, the State would call
4 Kevin Qwyer.

5 WHEREUPON,

6 **KEVIN DAVID QWYER,**
7 having been duly sworn by the Deputy Clerk of Court,
8 testified as follows:

9 DEPUTY CLERK OF COURT: Please be seated. State
10 your full name for the record.

11 THE WITNESS: Kevin David Qwyer.

12 **DIRECT EXAMINATION**

13 BY MR. RICHARDSON:

14 Q Mr. Qwyer, what do you do for a living?

15 A I work for Florence County EMS.

16 Q Okay. And how long have you been doing that?

17 A Approximately eight years.

18 Q All right. Were you employed in the same capacity last
19 July 25th?

20 A Yes, sir.

21 Q Okay. What do you do for EMS?

22 A I am a sergeant with EMS. I'm the paramedic crew chief
23 on the truck. It means I'm in charge of the EMS unit for
24 response and patient care.

25 Q So you, when a 9-1-1 call comes in and something needs

SW - K. QWYER - DIRECT

1 emergency help, you're the one that responds?

2 A Yes, sir.

3 Q Okay. Did you have occasion to respond to Gilbert
4 Drive back on July 25th of last year?

5 A Yes, sir.

6 Q What did you find when you got there?

7 A We arrived to find a pediatric patient, 5-year-old
8 patient unconscious on the floor in a bedroom there at lot
9 43. He was breathing approximately two to four times a
10 minute. He was not responsive. He had some injuries
11 noted as I noted with my PCR.

12 Q Okay. And what kind of injuries did you see?

13 A We noted that his forehead was swollen all the way
14 across. We also noted wounds to his arms and legs,
15 abrasions to his hands and feet. And one very prominent
16 bruise across his chest diagonally across the left side of
17 – basically left of the rib cage.

18 Q Okay. Did you notice whether or not he had vomited?

19 A The by-standards on the scene stated he had vomited
20 approximately an hour prior to our arrival. We did note
21 that his shirt was wet and cold, and we assumed that it
22 was from that vomiting.

23 Q Okay. Do you remember who was present in the house
24 when you got there?

25 A There was two males there. One appeared to be in the

SW - K. OWYER - DIRECT

1 mid teens and one appeared to be approximately eight to
2 ten. They said they were the brothers of the patient that
3 we had.

4 Q Okay. What did you do once you saw the patient?

5 A We immediately noted the distress. He wasn't breathing
6 adequately, approximately two to four times a minute.
7 There was also what we call rales, which is the gurgling
8 sound of the lungs that we could hear from across from the
9 room. We immediately removed him from the room and took
10 him straight to the truck where we could -- trying to
11 secure an airway. We assisted ventilations. We placed
12 air way through his nose, and then after several attempts
13 I was able to intubate the patient. We started an IV. We
14 gave him medications in case he's an overdose as normal
15 protocol for any unresponsive patient, monitored his
16 vitals and transported him to the hospital.

17 Q All right. Did anything change in his condition on the
18 way to the hospital?

19 A His blood pressure came up a little bit, but that was
20 because of IV bolus that we administered. Other than that
21 he had no change in responsiveness.

22 Q Okay. What is Lidocaine? Are you familiar with that?

23 A Lidocaine is a drug used for cardiac patients. It's
24 also used some in dentistry for as an analgesic.

25 Q So it's a drug used by doctors on patients?

SW-K.OWYER - DIRECT

1 A It's drugs used by doctors. We also use it for certain
2 dysrhythmias but not in this case.

3 Q Okay. When you arrived at the hospital what did you
4 do?

5 A We had previously notified the ER staff that we were
6 coming in because it's a very ill patient. We transferred
7 care to the patient, gave the doctors/nurses their report.
8 We also notified the Pee Dee because some of the injuries
9 did not the match the stories that we were getting and
10 made us suspicious.

11 Q Okay. At any time when he was with you did he regain
12 consciousness at all, able to speak, or anything like
13 that?

14 A No, sir.

15 Q Sir, did he make any sounds?

16 A No, sir, other than the gurgling in his lungs when we
17 ventilated him. That was the only sound he made.

18 Q All right. You noted swelling all the way across the
19 front of his head?

20 A All the way across his forehead, yes, sir.

21 Q All right. Please answer any questions Ms. Wingard has
22 for you.

CROSS-EXAMINATION

23 BY MS. WINGARD:

24 Q Mr. -- is it Qwyer?

SW - K. QWYER - CROSS

1 A Qwyer.

2 Q Mr. Qwyer, you noted that there were two people there.
3 One looked to be close to ten years old; is that right?

4 A Yes, ma'am, probably somewhere between eight and ten
5 range.

6 Q And then there was a mid teenager?

7 A Yes, ma'am.

8 Q Who gave you the information?

9 A The older boy gave us the information.

10 Q And that information was that the patient had struck
11 his head yesterday; is that right?

12 A Yes, ma'am.

13 Q Or the day before this incident. And that also he had
14 gotten in a fight on the day that you were there?

15 A Yes, ma'am.

16 Q When you took him to the truck did you offer to let the
17 other people go with you or what's your protocol in that
18 regard?

19 A Normally with any minors we don't transport them. You
20 know, if we're taking our patient but we don't transport
21 minors from the scene.

22 Q So you didn't give them the option of going to the
23 hospital or not?

24 A No, ma'am.

25 Q Okay. No other questions.

SW - K. OWYER - REDIRECT

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THE COURT: Redirect?

MR. RICHARDSON: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. RICHARDSON:

Q Mr. Qwyer, why did you notify the police?

MS. WINGARD: Objection, Your Honor.

THE COURT: I overrule that objection in terms of the circumstances. I think it fits, one, at least one of the exceptions to the hearsay rule. Rights are reserved.

Proceed.

MR. RICHARDSON: Go ahead.

THE COURT: Go ahead.

THE WITNESS: We felt that the injuries were not — didn't match up with the —

MS. WINGARD: Objection, Your Honor, that is conclusory.

THE COURT: Establish his training in specific terms concerning what his training is and what he can observe.

MR. RICHARDSON: Yes, sir.

BY MR. RICHARDSON:

Q Mr. Qwyer, what kind of training, education, background do you have in being able to evaluate the patient's injuries?

A In order to become a paramedic you have approximately

SW - K. OWYER - REDIRECT

1 two years of training in patient assessment treatment

2 That also includes clinical work in both the hospital and
3 in the field on an ambulance.

4 Q Okay. And you say you've been doing this how long?

5 A Approximately eight years now.

6 Q Eight years?

7 A Yes, sir.

8 Q All right. And you said when you got to the scene the
9 older of the two boys gave you the background?

10 MS. WINGARD: Judge —

11 THE WITNESS: Yes.

12 MS. WINGARD: -- I still don't think he's qualified
13 to make this conclusion and give this opinion which is
14 what he would be doing.

15 THE COURT: Go further in regard to his background
16 concerning after-training, his experience in the field —

17 MR. RICHARDSON: Yes, sir.

18 THE COURT: --on-site, that kind of thing.

19 BY MR. RICHARDSON:

20 Q Mr. Qwyer, in your eight years approximately how many
21 calls have you responded to? Can you put a number on it?

22 A We were on -- we can run anywhere between 8 and 20
23 calls per shift depending on, you know, which particular
24 truck and county you're on. We run 120 calls -- or 120
25 shifts or so a year. In eight years, I mean, you're

SW - K. OWYER - REDIRECT

1 talking, what, somewhere in the ten thousand range.

2 Q Okay. And every time you arrive at a call do you have
3 to assess the patient?

4 A Always responsible for assessing the patient, their
5 vital signs, their physical capacity, whether they're
6 responsive/unresponsive, any traumatic injuries, disease
7 processes.

8 Q What kind of specific medical training do you have that
9 lets you look at an injury and see whether it matches up
10 with a story you're getting?

11 A There's some training and there's a lot of experience
12 in that. If someone says I fell down the stairs and broke
13 a leg you can normally see evidence of that. There's
14 also -- I don't want to say gut feeling, but you can tell
15 when someone says this happened and you--if you say I
16 fell and hit a wall, if it's a, you know, concrete wall
17 that's one thing. If it's a sheet rock wall that's
18 another thing.

19 Q In your time with EMS have you responded to calls with
20 head injuries?

21 A Yes, sir.

22 Q All right. When you saw Child laying there, saw the
23 swelling on his forehead, how did you -- how did you
24 assess that injury?

25 A I assessed the injury. The swelling was relatively

SW - K. OWYER - REDIRECT

1 significant also noting that he was unresponsive and had
2 vomited. Those are also signs of a traumatic head injury,
3 a significant head injury.

4 Q Okay. So based on your experience – Your Honor, I'd
5 offer the witness as an expert in patient assessment, I
6 guess, if that's...

7 MR. BELL: Your Honor, we feel he'd not be an
8 expert in assessing how to immediately deal with a
9 patient, but he has absolutely no training in forensic
10 assessment as to the cause of an injury and would assess,
11 therefore, he can't draw conclusions in that manner. No
12 one is questioning his judgment or what he did in
13 responding to the immediate medical situation with which
14 he was presented, which is his training and his job, you
15 know. Other individuals will follow, I suppose, that will
16 deal with the issue we're talking about here, but I don't
17 think this gentleman is qualified to reach any conclusions
18 as to the truth or untruth of any statements made to him.

19 THE COURT: The objection is overruled pursuant to
20 Rule 702, Fields versus Regional Medical Center of
21 Orangeburg and State versus Jones. Rights are reserved;
22 rights are protected.

23 Proceed.

24 MR. RICHARDSON: Thank you, Your Honor. So is he
25 so qualified?

SW - K. OWYER-RECROSS

1 **THE COURT:** Yes.

2 **BY MR. RICHARDSON:**

3 Q In your expert opinion being able to assess patients,
4 why did that story that you got not coincide with what you
5 saw?

6 A Any time you have that significant of a head injury
7 you're speaking of major trauma. Falling in a house or
8 fighting with some kids just doesn't back it up. So on
9 the suspicion that the story was not true is why I
10 notified the P.D.

11 Q And when you got him to the hospital that was your last
12 involvement?

13 A That was my last involvement, yes, sir.

14 Q All right. Thank you. That's all.

15 **THE COURT:** Cross-exam.

16 **RECROSS - EXAMINATION**

17 **BY MS. WINGARD:**

18 Q Mr. Qwyer, any time you have a nonresponsive five year
19 old accompanied only by another child and somebody in
20 their mid teens, wouldn't you automatically call law
21 enforcement?

22 A No, ma'am.

23 Q Why -- I mean, that doesn't make sense to me if you've
24 got this nonresponsive child and unaccompanied by any sort
25 of adult supervision you wouldn't automatically call law

SW- E. BARNES - DIRECT

1 enforcement?

2 A If the child is diabetic and has low blood sugar then,
3 no, because that's a disease process. This was a
4 traumatic process.

5 Q Any time you have a child with any sort of have
6 traumatic injury at all, wouldn't you call law
7 enforcement?

8 A Not always, no.

9 Q Okay. Let me ask you this then, isn't it possible to
10 have been injured in a head injury one day and have the
11 symptoms not manifest till the next day?

12 A Yes, ma'am.

13 Q Thankyou.

14 THE COURT: Redirect.

15 MR. RICHARDSON: None, Your Honor.

16 THE COURT: You may step down.

17 THE WITNESS: Yes, sir.

18 THE COURT: Next witness please.

19 MR. RICHARDSON: The State would call Deputy Eric
20 Barnes. Your Honor, may Mr. Qwyer be excused?

21 THE COURT: Suitable?

22 MS. WINGARD: Yes, sir.

23 THE COURT: He's excused.

24 WHEREUPON,

25 ERIC BARNES,

SW- E. BARNES - DIRECT

1 having been duly sworn by the Deputy Clerk of Court,
2 testified as follows:

3 THE DEPUTY CLERK OF COURT: Please be seated.
4 State your full name for the record.

5 THE WITNESS: Deputy Eric Barnes.

6 **DIRECT EXAMINATION**

7 BY MR. RICHARDSON:

8 Q Deputy Barnes, you work for the Florence County
9 Sheriff's Office?

10 A Yes, sir.

11 Q All right. How long have you been working for them?

12 A The Sheriff's Office, about two years.

13 Q How long have you been in law enforcement all together?

14 A About five.

15 Q All right. Were you employed as a deputy back in July
16 of last year?

17 A Yes, sir.

18 Q All right. Is that the same capacity you're in now?

19 A Yes, sir.

20 Q All right. What were your duties?

21 A Patrol division. We answer calls.

22 Q Okay. So you respond out to scenes?

23 A Yes, sir.

24 Q Okay. Back on July 25th of 2008 did you have occasion
25 to respond to a call involving a nonresponsive 5 year

SW- E. BARNES- DIRECT

1 old?

2 A Yes, sir.

3 Q What happened?

4 A We responded to the hospital 'cause EMS advised us that
5 there was a child involved that wasn't breathing or having
6 respiratory distress and there wasn't an adult on scene.

7 Q When you got to the hospital what did you observe?

8 A Primarily I made contact with the paramedics, and they
9 told me what had happened with the child and the trauma
10 and the condition he was in.

11 Q Okay. At any point in time -- well when you arrived
12 was any family there?

13 A There was a few of them there. They was steady
14 arriving.

15 Q Okay. So people were coming in as you were there? Did
16 you meet with or talk to any family?

17 A I did. We went to a -- one of the private -- they have
18 a private room for the families.

19 Q Okay. Did you observe the defendant at all?

20 A Yes, sir, I did.

21 Q Okay. What did you see?

22 A The defendant was -- had his head -- had his shirt on
23 top of his head with his head in his lap.

24 Q Did you see the rest of the family members sitting with
25 him?

SW - E. BARNES - CROSS

- 1 A The other family members, they were upset.
- 2 Q Okay.
- 3 A And concerned about the -- that.
- 4 Q And after you talked to family members and whatnot did
- 5 you then call investigations?
- 6 A Yes, sir.
- 7 Q Okay.
- 8 A After the doctor stated that they had to do emergency
- 9 surgery and it didn't look too promising so I went ahead
- 10 and notified Lieutenant Hooks.
- 11 Q Okay.
- 12 A And got confirmation to go ahead and notify forensics
- 13 and the on-call investigator.
- 14 Q So investigators and crime scene then showed up at the
- 15 hospital?
- 16 A Yes, sir.
- 17 Q All right. Was that the extent of your involvement?
- 18 A Yes, sir.
- 19 Q And you wrote a report and that was it?
- 20 A Yes, sir.
- 21 Q Okay. Please answer any questions Mr. Wingard has for
- 22 you.

CROSS - EXAMINATION

23

24 BY MS. WINGARD:

- 25 Q What time did you get there, Deputy Barnes?

SW - E. BARNES - CROSS

- 1 A I'm unsure. Somewhere after 1800 hours.
- 2 Q So you got there sometime after 6:00?
- 3 A Yes, ma'am.
- 4 Q So about the time you got there was Jermaine there
- 5 already, or did he get there after you got there?
- 6 A Unsure. A few minutes here or there, give or take, not
- 7 sure. I was trying to assess the whole situation.
- 8 Q You didn't have any conversation with him?
- 9 A Yes, I did. I got his information.
- 10 Q Just who he was?
- 11 A I got all the family members' information for my
- 12 report.
- 13 Q And who else was there at that time?
- 14 A Investigator Jenco.
- 15 Q When you first got there were you --
- 16 A When I got first got there, no, I was by myself.
- 17 Q And that was -- that's what I'm asking. You were there
- 18 as the only law enforcement officer, but what family
- 19 members were there when you got there?
- 20 A I believe it was the -- both brothers, the mother, and
- 21 a few other members it was that I recall.
- 22 Q So by the time you got there Child s mom, Ms.
- 23 Williams, was there as well as Jermaine here and the
- 24 little boy K.P. ?
- 25 A Yes, ma'am.

1 Q And really all you did was talk to the doctors, found
2 out the severity of the condition, and so you knew you
3 needed to get an investigator?

4 A Correct.

5 Q Thank you.

6 THE COURT: Redirect.

7 MR. RICHARDSON: Nothing, Your Honor.

8 THE COURT: You may step down.

9 MR. RICHARDSON: May he be excused?

10 THE COURT: Suitable?

11 MR. JEPERTINGER: May we approach?

12 THE COURT: Yes.

13 (WHEREUPON, counsel approached the Bench for an
14 off-the-record discussion.)

15 THE COURT: All right, jurors, we'll stop here for
16 the lunch respite. The lawyers must listen to this tape
17 to make sure it is in a position to be admitted. That'll
18 be done during their lunch recess. Please remember my
19 instructions to you. Do not discuss the case among
20 yourselves if some of you go to lunch together. And under
21 no circumstances discuss it with any other person outside
22 this courtroom. 2:00. Please be back 2:00. Please be
23 back at 2. Catch them the elevator. No one leaving now
24 but the jury.

25 (WHEREUPON, the jury was removed from

1 the courtroom at 12:25 p.m., and the following proceedings
2 commenced in open court.)

3 THE COURT: State, anything for the record?

4 MR. JEPERTINGER: No.

5 MR. RICHARDSON: No, sir, Your Honor.

6 THE COURT: Defense?

7 MS. WINGARD: No.

8 THE COURT: See you at 2:00.

9 (WHEREUPON, a lunch break was taken.)

10 THE COURT: All right, Counsel, what is the state
11 of the tape?

12 MR. JEPERTINGER: If it please the Court, we've
13 gone through the tape, Your Honor, and it's been redacted.
14 First one to agreement and order of the Court, Your Honor,
15 and we can handle it one of two ways, Your Honor. We can
16 either substitute this for State's Exhibit 5 for
17 identification or we can enter it into evidence as State's
18 Exhibit, I believe it'd be 22, whichever is your
19 preference, Your Honor.

20 THE COURT: My presence is to put it in lieu of the
21 other tape and take that one without so we won't have a
22 mixup.

23 MR. JEPERTINGER: Okay. So we will make this —

24 MS. WINGARD: That would make sense to me.

25 THE COURT: Yeah.

SW - T. MCKINNON - DIRECT

1 MR. JEPERTINGER: We will make this State's Exhibit
2 5, and at this time we would move it into evidence, Your
3 Honor.

4 THE COURT: Without objection. All right.

5 MS. WINGARD: Yes, sir. We reviewed it during the
6 lunch time.

7 THE COURT: Yes. Okay.

8 (WHEREUPON, State Exhibit No. 5 was admitted into
9 evidence.)

10 THE COURT: All right, bring the jury out.

11 (WHEREUPON, the jury was returned to the courtroom
12 at approximately 2:00 p.m., and the following proceedings
13 commenced in open court.)

14 THE COURT: Hope everyone had a nice lunch.
15 Everybody feeling well? Thank you.

16 | Next witness please.

17 MR. JEPERTINGER: Yes, sir. The State would call
18 Tracy McKinnon to the stand.

19 DEPUTY CLERK OF COURT: If you would, sir, place
20 your left hand on the Bible, raise your right hand.

21 WHEREUPON,

22 **TRACY MCKINNON,**
23 having been duly sworn by the Deputy Clerk of Court,
24 testified as follows:

25 THE DEPUTY CLERK OF COURT: Please be seated.

SW - T. MCKINNON - DIRECT

1 State your full name for the record.

2 THE WITNESS: Tracy McKinnon.

3 **DIRECT EXAMINATION**

4 BY MR. JEPERTINGER:

5 Q Mr. McKinnon, for whom do you work?

6 A I work for the South Carolina State Law Enforcement
7 Division more commonly referred to as SLED.

8 Q And how long have you worked for SLED?

9 A For just over three years, almost three-and-a-half
10 years.

11 Q And what are your responsibilities at SLED?

12 A I'm responsible for analyzing bodily fluids such as
13 blood urine, tissues such as brain or liver for the
14 presence and absence of drugs or poisons, alcohol, the
15 quantitation or producing a numerical value for how much
16 drugs actually in the body and then interpretation of my
17 findings in courts of law.

18 Q Okay. In common terms would you be referred to as a
19 toxicologist?

20 A Yes.

21 Q Okay. What special education or training did you
22 receive to become a toxicologist?

23 A I've got a bachelor of science degree in chemistry from
24 the University of North Carolina/Charlotte and a masters
25 of science, forensic science with a forensic toxicology

SW -T. MCKINNON -DIRECT

1 concentration from Arcadia University in Pennsylvania.

2 Q Okay. And when we use the word forensic does that mean
3 related to the courtroom?

4 A Generally anything having to do with the judicial
5 system.

6 Q Okay. Have you ever been qualified in the field of
7 forensic toxicology and interpretation of those results in
8 court before?

9 A Yes, I have.

10 Q Okay. How many times previously have you been
11 qualified as an expert?

12 A Three times previous.

13 Q Okay.

14 MR. JEPERTINGER: At this time, Your Honor, I would
15 move to have Mr. McKinnon qualified in the field of
16 forensic toxicology and the interpretation of those
17 results.

18 THE COURT: You're entitled to voir dire before I
19 rule. Do you desire to voir dire?

20 MS. WINGARD: No, sir.

21 THE COURT: He's qualified. You may proceed in
22 those areas.

23 BY MR. JEPERTINGER:

24 Q Okay. Sir, I'm gonna show you -- I'd like to have this
25 marked for identification first please.

SW - T. MCKINNON - DIRECT

1 (WHEREUPON, State Exhibit No. 22 was marked for
2 identification only.)

3 THE COURT: 22 for I.D. at this time.

4 BY MR. JEPERTINGER:

5 Q I'm gonna show you what's been marked as State's
6 Exhibit 22 for identification. Can you identify that
7 three page document?

8 A Yes, this is a copy of my toxicology report on the
9 victim.

10 Q In this case the victim would be Child ?

11 A Yes.

12 Q All right.

13 MR. JEPERTINGER: At this time I would move to have
14 State's Exhibit 22 moved into evidence so he can testify
15 from it.

16 THE COURT: Any objection?

17 MS. WINGARD: My only objection would be we don't
18 have the chain on the blood if subject to establishing how
19 he became in possession of the blood.

20 BY MR. JEPERTINGER:

21 Q Okay. Do you know how you received the blood in this
22 case?

23 A Actually I do have a copy of my chain. And it was --

24 THE COURT: Have you seen the chain, Counsel?

25 MS. WINGARD: No, sir. No, sir.

SW - T. MCKINNON - DIRECT

1 THE COURT: All right. Suppose you show that to
2 counsel.

3 (Pause.)

4 MS. WINGARD: Judge, I would need some more
5 information before I can agree to this. It appears that
6 it was mailed to him so we would —

7 THE COURT: All right. At this time, Counsel, you
8 must validate the chain of custody in some form or fashion
9 so query him in that regard and we'll take it step by
10 step.

11 BY MR. JEPERTINGER:

12 Q Is there any way from this form that you've shown me in
13 terms of chain of custody who -- if you could identify the
14 people that you would be in the chain; that you would have
15 received this particular sample of blood from in this
16 case?

17 A According to this chain, this was mailed from MUSC on
18 July 29th of 2008, and then I actually took custody of the
19 evidence -- we received it at SLED on July 29th, 2008.
20 And then I took custody of it that same day when it came
21 into SLED.

22 Q And normally -- is that MUSC, and that's Medical
23 University of South Carolina?

24 | A Correct, yes.

25 Q And is that where they perform the forensic autopsies?

SW - T. MCKINNON - DIRECT

1 A I believe for this area of the state that's where
2 autopsies are performed.

3 Q And is that their normal method of sending you blood
4 samples?

5 A Yes. This is generally how we receive samples from
6 MUSC.

7 THE COURT: All right. The missing nexus is MUSC
8 obviously the pathologist department. Is she going to
9 testify in the case?

10 MR. JEPERTINGER: The forensic pathologist will
11 testify in this case.

12 THE COURT: I will admit it with this caveat.
13 She's got to connect it up when she does take the stand
14 and that'll --

15 MR. JEPERTINGER: Yes, sir.

16 THE COURT: -- complete the chain.

17 MR. JEPERTINGER: Yes, sir.

18 MS. WINGARD: Yes, sir, that's fine. I would like
19 him to address though how it was packaged, if that sort of
20 the information.

21 THE COURT: Query him concerning the best package.

22 BY MR. JEPERTINGER:

23 Q How do you receive the packaging?

24 A Generally it's received refrigerated in a small
25 cardboard box roughly eight, eight inches by -- roughly

SW - T. MCKINNON - DIRECT

1 the size of the Bible, the Bible that's here on the stand.

2 Q Yes.

3 A Refrigerated. And at that time whatever the contents
4 of the package are our evidence technicians packages it up
5 and place it in our toxicology holding bin at which at a
6 later time we will actually take custody of those.

7 Q And when you received that packaging was it all sealed?

8 A Yes, yes.

9 Q All right. And it didn't look like it had been
10 tampered in anyway shape or form?

11 A No. No tampering, no.

12 Q And the refrigeration, is that through dry ice or?

13 A Actually I believe that's how most of the samples come
14 in. I'm not exactly sure how they keep the samples cool,
15 but generally we will receive the samples in preserving
16 tubes so whether or not they're actually fully
17 refrigerated or at room temperature or even slightly low
18 room temperature there shouldn't be any compromise of the
19 samples.

20 Q And in this particular case that's how you received the
21 package, correct?

22 A Yes.

23 Q Untampered?

24 A Yes.

25 MR. JEPERTINGER: All right. And at this point in

SW - T. MCKINNON - DIRECT

1 time subject to the Court's ruling in terms of --

2 THE COURT: Yes, I'm going to let it in with the
3 additional response that is testimony of the pathologist.

4 MR. JEPERTINGER: Very good.

5 (WHEREUPON, State Exhibit No. 22 was admitted into
6 evidence.)

7 BY MR. JEPERTINGER:

8 Q Could you familiarize yourself with that report a
9 little bit before asking questions.

10 A Okay.

11 Q Can you tell the jury what you would have found in the
12 blood sample of Child that was submitted to
13 you?

14 A Generally on any child fatality case that we receive we
15 do a volatile screen which includes ethanol and other
16 alcohol type substances and then a more comprehensive
17 drugs abuse screen. We're gonna look for anything under
18 the sun. The samples that were submitted were subjected
19 to our full comprehensive screen.

20 Q Okay. Now let me ask you, let me look at that. In
21 regards to ethanol, is that alcohol?

22 A Yes, that's drinking alcohol.

23 Q Okay. And you --your result there?

24 A Negative.

25 Q Okay. And methanol, what is that?

SW - T. MCKINNON - DIRECT

- 1 A Methanol is usually detected in cases where the body
2 has been embalmed, the formaldehyde that the embalmers use
3 mixes and basically becomes what we detect as methanol.
- 4 Q Okay. And that -- the results for that?
- 5 A Were negative.
- 6 Q Okay. Acetone, can you tell the jury about that.
- 7 A Acetone is a substance that we're looking for for any
8 time it's, you know, somebody has diabetes. I'm sure that
9 people may have heard of people that have a ketone
10 acidosis. Basically what we're looking for there is the
11 acetone and that can also come from sudden shock where
12 your body just gets a rush of acetone in the body, and at
13 that point we will detect the acetone.
- 14 Q But there was none here, correct?
- 15 A No acetone in the sample.
- 16 Q Okay. Isopropanol, is that rubbing alcohol?
- 17 A Rubbing alcohol used to swab an area prior to take a
18 sample and then you would actually detect that if there
19 was any contamination.
- 20 Q And in this case?
- 21 A Negative.
- 22 Q So that was negative as well, okay. Then you analyzed
23 for amphetamine?
- 24 A Correct.
- 25 Q And amphetamine is some type of drug, correct?

SW - T. MCKINNON - DIRECT

1 A Generally are drugs of abuse screen. We do a seven
2 panel screen essentially. Amphetamines, methamphetamine,
3 benzodiazepines, oxycodone, and then we also screen for
4 cocaine and a class of drugs called opiates.

5 Q And also I notice, not to cut you off, but cannabinoid
6 which is like marijuana, right?

7 A Yes.

8 Q And I don't -- acetaminophen which is aspirin, correct,
9 or some ---

10 A Tylenol.

11 Q ---Tylenol? And I don't know this term, salicylates?

12 A Salicylates. That would be the aspirin.

13 Q The aspirin, okay.

14 A Correct.

15 Q All that in this case was?

16 A Negative.

17 Q All right.

18 A Indicative that the child had absolutely nothing in his
19 system up unto our comprehensive screen.

20 Q All right. Now I see on this form that he was tested
21 positive for Lidocaine, correct?

22 A Correct.

23 Q All right. Now can you tell the folks of the jury what
24 is Lidocaine?

25 A Lidocaine is generally used in local anesthetic terms.

SW - T. MCKINNON - DIRECT

1 If you're getting, say, a minor stitch or something on
2 your finger or somewhere else on your body a surgeon will
3 put a little Lidocaine on the area that's gonna be tended
4 to. Or it could also be used as a minor pain management
5 type medication where you would actually apply a Lidocaine
6 patch directly to an area for pain relief. And generally
7 when we see it we see it in resuscitative measures where
8 Lidocaine is injected into the body to stimulate the heart
9 beat, get a state of heart beat.

10 Q So that would be used in like in emergency rooms and
11 hospitals and so on and so forth?

12 A Yes. Whenever we see that's generally the reason that
13 we detect it.

14 Q All right. Now let me ask you, sometimes you use the
15 word, metabolite. Can you tell the ladies and gentlemen
16 of the jury what a metabolite is and what that means?

17 A Yes. A metabolite is what the type product of anything
18 that's ingested drug-wise, what your body is gonna do to
19 it. Any time that you take any kind of medication your
20 body is gonna change that medication to help rid it out of
21 the body. And sometimes these metabolites can be active.
22 Sometimes and most often than not they're inactive meaning
23 they have no pharmaceutical properties at all in the body.

24 Q Okay. And in this case is there any metabolite? Did
25 that process happen?

S W - T MCKINNON - DIRECT

1 A There is. A metabolite of Lidocaine, one of the main
2 metabolites that we look for is simply it's MEGX, M-E-G-X.
3 And in this case we found -- I detected no -- none of the
4 metabolite which indicates that this drug was administered
5 in a hospital setting, that there was no pain management
6 used or no local anesthetic type use, that it was -- it
7 would have been indicative of being administered in the
8 hospital.

9 Q Okay. And is it your experience through toxicology
10 that they normally inject it intravenously?

11 A Generally, yes.

12 Q Okay. I also say, and it's the same -- substance to
13 the same question, there was a urinal sample submitted to
14 you as well?

15 A Yes.

16 Q And by the same method in the box?

17 A Correct. It would have come in with the blood samples
18 also.

19 Q Okay. See if you can look at that real quickly.

20 A Okay.

21 Q Okay. And same question, was there any ethanol in the
22 system?

23 A No, no ethanol.

24 Q And methanol?

25 A No methanol.

SW - T. MCKINNON - CROSS

1 Q Acetone?

2 A No acetone.

3 Q Rubbing alcohol?

4 A No rubbing alcohol.

5 Q Okay. So within a reasonable degree of toxicological
6 certainty and with a reasonable degree of interpretation
7 of toxicological results, what would your opinion be as to
8 how the Lidocaine got into his system?

9 A The Lidocaine would have been into his -- would have
10 gotten into his system in attempt to resuscitate or revive
11 the child to try to establish a sustainable heart beat.

12 Q Okay. Thank you so much. I appreciate it. Answer any
13 questions that Ms. Wingard might have.

14 **CROSS-EXAMINATION**

15 BY MS. WINGARD:

16 Q On your second page it says, insufficient sample for
17 further analysis. What further analysis would have been
18 anticipated?

19 A Okay. The sample that I initially tested that I did my
20 volatile screen which include the ethanol, methanol,
21 acetone, isopropanol, and then the drugs of abuse screen
22 were the admission sample basically what the sample that
23 was taken when the child was admitted into the hospital.
24 The -- generally we don't receive very much of this
25 sample, not enough to conduct a full comprehensive workup

SW - T. MCKINNON - CROSS

1 on the sample so at that point I would actually go into
2 what was taken at autopsy to conclude my testing.

3 Q So did you test both blood from the autopsy and blood
4 from the hospital?

5 A Yes. I did the alcohol screen and the drugs of abuse
6 screen from the admissions blood and then the general --
7 the what we call the general drug screen using more
8 sensitive and sophisticated instrumentation to look for
9 other drugs.

10 Q Did you get the admission blood from MUSC as well?

11 A Yes. It all would have come in together at the same
12 time in the same packet.

13 Q So the admission blood would have gone down to MUSC
14 with the body and then you would have had admission blood
15 sent with the autopsy?

16 A I can't testify to how MUSC would have received that,
17 the admissions blood.

18 Q But at any rate this child didn't have anything --
19 nobody had given him alcohol, nobody had given him
20 marijuana, nobody have given him any kind of drugs. He
21 has, for all practical purposes with the exception of
22 Lidocaine, what we would call a clean drug screen?

23 A Yes.

24 Q Thank you.

25 THE COURT: Redirect.

SW-P. BIRD-DIRECT

1 MR. JEPERTINGER: No, sir.
2 THE COURT: Okay. We'll excuse him to go back to
3 SLED.

4 MR. JEPERTINGER: Yes, sir.
5 THE COURT: Have a good day.
6 Next witness please.

7 MR. RICHARDSON: The State would call Paul Bird.
8 WHEREUPON,

9 **PAUL BIRD,**
10 having been duly sworn by the Deputy Clerk of Court,
11 testified as follows:

12 THE DEPUTY CLERK OF COURT: Please be seated.
13 State your full name for the record.

14 THE WITNESS: My name is Paul Bird, B-I-R-D.

15 MR. RICHARDSON: Thank you, Your Honor.

16 **DIRECT EXAMINATION**

17 BY MR. RICHARDSON:

18 Q Corporal Bird; is that right?

19 A Correct.

20 Q You work with the Sheriff's Office here in Florence?

21 A I do.

22 Q And how long have you worked for the Sheriff's Office?

23 A I've worked with the Sheriff's Office approximately
24 seven years.

25 Q All right. What do you do for the Sheriff's Office?

SW - P. BIRD - DIRECT

1 A I work in forensics.

2 Q All right. And does that mean crime scene?

3 A Crime scene, yes.

4 Q So if a call comes out there's, you know, something
5 happens somewhere, you report to the scene to do what?

6 A We're a support unit. We're called out either by
7 deputies or investigators whenever they feel like there's
8 a scene of importance to where they need the expertise of
9 a forensics team to locate, basically secure and preserve
10 evidence.

11 Q Okay. Back in July of last year did you work the same
12 capacity that you do now?

13 A Yes.

14 Q Did you have occasion to be called in on this
15 particular case?

16 A I was.

17 Q What's the circumstances surrounding you being called
18 in?

19 A On the evening of the 25th, 2008 -- this is in July I
20 believe it was. I received a call from dispatch to
21 respond to McLeod Hospital in reference to a possible
22 child abuse case in which case I did respond to the
23 hospital and upon arrival I met with the responding Deputy
24 Barnes and also Investigator Renea Lowder who also works
25 with the Sheriff's Office. At that time I was advised

SW - P. BIRD - DIRECT

1 that the victim in this case had been rushed in to
2 emergency surgery so I was unable to view the victim at
3 that time. During the process I believe Investigator
4 Lowder was interviewing witnesses or family members of
5 that nature. I was waiting to get some further
6 information. At that time she had obtained consent to
7 search from the mother of the victim to go to the
8 residence and for us to go there with law enforcement to
9 make entry into there and do a search. At which time
10 myself and Lieutenant Brett Camp, also with the Sheriff's
11 Office, he's a lieutenant over investigations, we
12 responded out there and performed a search on the
13 residence.

14 Q Okay. And was that the only search that you did?

15 A No. We also obtained a search warrant a couple of days
16 later after obtaining more information in the case, and
17 went back and did a second search with a search warrant.

18 Q Okay. I want to show you what's marked as Exhibit 18,
19 State's Exhibit already in evidence. You recognize this
20 item?

21 A Yes.

22 Q Okay. How do you recognize it?

23 A That's one of the belts that was collected during the
24 search warrant a couple of days later obtained, and I
25 located that underneath the master bedroom bed.

SW - P. BIRD - CROSS

1 Q Okay. After you searched the property what other
2 involvement did you have in the case?

3 A After the second search?

4 Q Yeah.

5 A Yes. After the search, that was pretty much the end of
6 the involvement for me. I also did attend the autopsy.

7 Q Okay. During the search of the house did you see any
8 blood or anything that will give rise to DNA swabs or
9 something of that nature?

10 A No. From the information we received from the
11 responding EMS and what we're obtaining there from the
12 bedroom where the victim was actually located by EMS and
13 we done a thorough search of that room produced no blood.
14 We found none throughout the residence.

15 Q Okay. Please answer any questions Ms. Wingard may have
16 for you.

CROSS-EXAMINATION

17
18 BY MS. WINGARD:

19 Q Did you take the pictures at the house?

20 A Yes, I took the photographs.

21 Q And I'm a little confused. Did you take the pictures
22 during the first search or the second search?

23 A The first search initial is where you always photograph
24 before you touch or move anything. The first thing you do
25 is always take photographs so you can photograph it the

SW - P. BIRD - CROSS

1 way it is when you arrive there.

2 Q So these were done on the 25th?

3 A Correct.

4 Q So these photographs would have been taken prior to the
5 burglary?

6 A Correct.

7 Q Did you photograph or document -- and I don't see it in
8 here -- the location of the belt and where you found it?

9 A The location of the belt being found would probably be
10 on the packaging or the bag that I placed it in. Each
11 piece of evidence gets assigned a separate bag. And right
12 on the bag at that time where it's located so I can keep
13 up with it. Many times you have extensive amount of
14 objects that you collect in a search like that.

15 Q Right. But that's what I'm asking. You did not
16 photograph so we could see where the belt was. You just
17 seized it from under the bed.

18 A I don't recall whether it was photographed during the
19 second search or not. I'd have to go back and look
20 through the photographs to answer that.

21 Q Did you do any photographs during the second search?

22 A I don't recall if I took photographs during the second
23 search or not. I'd have to look back at the photographs
24 to know.

25 Q Can you recall where under the bed you found this belt?

SW - P. BIRD - CROSS

- 1 A Specifically under the bed, I – I don't know exactly
2 where.
- 3 Q Well, was it kind of on, you know, underneath the foot
4 of the bed or was it underneath the side of the bed or was
5 it in the middle of the bed?
- 6 A Best of my recollection it was around two feet
7 underneath the bed from the left side of the bed I believe
8 it was.
- 9 Q Okay. Let me show you this exhibit. This is the
10 master bedroom here?
- 11 A That's correct.
- 12 Q Okay. What size bed was that?
- 13 A I don't recall the size of the bed.
- 14 Q Was it – well, it's probably safe to say it wasn't a
15 twin bed, wasn't a single bed?
- 16 A No, I don't believe so.
- 17 Q Can – but can you – you can't recall whether it was a
18 double, a queen, or king?
- 19 A No.
- 20 Q And you think best of your recollection it was about
21 2-feet under the bed from which side?
- 22 A The left side.
- 23 Q So as we are – as we're looking at the left side of
24 the bed or as we're looking at it.
- 25 A Right, as you walk in the door.

SW - P. BIRD - CROSS

1 Q As you walk in the door, the left side?

2 A I believe so.

3 Q Now you found other belts; did you not?

4 A There were a total of eight belts, I believe it was,
5 that was actually collected during the search warrant.

6 Q And where did you find the other belts?

7 A I'm not certain that all the belts were collected by
8 myself. I believe my lieutenant that was also present and
9 there was also Investigator Lowder. We were all taking
10 part in the search, and I believe some of the items were
11 collected by my lieutenant. So I'd have to look on the
12 packaging to know for sure.

13 Q Okay. You can't recall any other belts that you
14 collected?

15 A No, I can't recall.

16 Q So I will have to ask the others?

17 A Correct.

18 Q This is the only belt to your recollection that you
19 found?

20 A That's correct.

21 Q Now did you do any testing on this belt for DNA
22 fingerprints, anything of that nature?

23 A No testing was done. It was a exam to see if it had
24 any type of bodily fluid or blood or something of that
25 nature. None was located.

SW - P. BIRD - CROSS

1 Q So there were no tests done on it?

2 A No tests, visible only.

3 Q You just looked at it and said well, I'm not, I can't
4 get anything so I'm not going to do anything with it.

5 A Right.

6 Q Were you looking for a specific belt or just belts in
7 general pursuant to your search warrant?

8 A No. We were pretty much looking for any type of
9 objects that could be used to cause some type of blunt
10 force trauma. We didn't have any specific thing we knew
11 that we were looking for. We were pretty much just trying
12 to find anything that could or may have been used.

13 Q So you just randomly collected these things?

14 A I wouldn't say it was randomly collected. Like I said,
15 we had to go through and look for anything that we felt
16 like could be used to cause a blunt force trauma or
17 something to beat or whip someone with. So it could have
18 been anything from belts to sticks to metal objects,
19 anything of that nature.

20 Q Indulge me a minute. That's all we have of this
21 witness.

22 THE COURT: Redirect.

23 MR. RICHARDSON: Yes, sir, Your Honor.

24 Let me pre-mark this for identification.

25 THE COURT: 23.

SW - P. BIRD - REDIRECT

1 (WHEREUPON, State Exhibit No. 23 was marked for
2 identification only.)

3 **REDIRECT EXAMINATION**

4 BY MR. RICHARDSON:

5 Q Corporal Bird, I want to show you what's been marked as
6 State's Exhibit 23.

7 MS. WINGARD: Can I see it please.

8 MR. RICHARDSON: Oh.

9 (Pause.)

10 BY MR. RICHARDSON:

11 Q Corporal Bird, this is State's Number 23 for
12 identification at this time. Could you identify what this
13 object is?

14 A This would be evidence bag, one of the ones we use to
15 collect - any time we have evidence we place them in the
16 bag, make markings on it, put case number, and wherever we
17 collect it, what the item is. This is where I collected
18 the belt from underneath the bed in the master bedroom.

19 Q All right.

20 MR. RICHARDSON: Your Honor, I'd like to move this
21 into evidence.

22 THE COURT: Any objection?

23 MS. WINGARD: Without objection.

24 THE COURT: 23.

25 (WHEREUPON, State Exhibit No. 23 was admitted into

SW - P. BIRD - REDIRECT

1 evidence.)

2 BY MR. JEPERTINGER:

3 Q Corporal Byrd, when you find a belt under a bed when do
4 you put it in a bag?

5 A At that time.

6 Q Same time?

7 A Yes, sir.

8 Q Is that also when you mark where you found it and what
9 it is?

10 A That's correct. Whenever I have evidence I usually
11 take several bags in with me from the vehicle, and I have
12 them available so I never know exactly how much evidence
13 is gonna be located at that time. So when I find
14 something that's of interest then I go ahead and mark it
15 on the bag and then place it into a bag so I can't get it
16 confused or with anything later as I collect more
17 evidence.

18 Q Okay, and this is the bag that that belt was, I just
19 showed you, was in?

20 A That's correct.

21 Q All right. That's all I have.

22 THE COURT: Recross.

23 **RECROSS-EXAMINATION**

24 BY MS. WINGARD:

25 Q What time of bed skirt, if any, was on the bed or was

SW - P. BIRD - RECROSS

1 it open?

2 A I'm sorry?

3 Q Do you know what a bed skirt is? Some men don't I
4 suppose.

5 A Indulge me please.

6 Q You know, one of the things —

7 THE COURT: We have a lesson on beds here now.

8 BY MS. WINGARD:

9 Q You know the little fancy thing around the bottom of
10 thebed?

11 A Like a dust ruffle.

12 Q Yeah, yeah.

13 A Okay, I'm familiar with that.

14 Q Okay. Was this — did this bed have a dust ruffle or
15 was it just open?

16 A I need to look at the photographs. I don't remember if
17 it does or does not.

18 Q You don't remember?

19 A I don't know.

20 Q Nothingfurther.

21 THE COURT: All right, you may step down.

22 Next witness please.

23 MR. RICHARDSON: Your Honor, may Corporal Bird be
24 excused from his subpoena?

25 THE COURT: Suitable, Counsel?

SW - R. JENCO - DIRECT

1 MS. WINGARD: Yes, sir.

2 THE COURT: All right.

3 MR. RICHARDSON: Your Honor, the State would call
4 Officer Renea Jenco.

5 DEPUTY CLERK OF COURT: Raise your right hand.

6 WHEREUPON,

7 **RENAEJENCO,**

8 having been duly sworn by the Deputy Clerk of Court,
9 testified as follows:

10 THE DEPUTY CLERK OF COURT: Please be seated and
11 state your full name for the record.

12 THE WITNESS: Investigator Renae Jenco with the
13 Florence County Sheriff's Office.

14 **DIRECT EXAMINATION**

15 BY MR. RICHARDSON:

16 Q Investigator Jenco, first, when this case arose your
17 last name was not Jenco, correct?

18 A That's correct.

19 Q You've since married.

20 A That's correct. It was Lowder during the
21 investigation.

22 Q Okay. That's L-O-W-D-E-R?

23 A That's correct.

24 Q Lowder. So if anything comes up with an Investigator
25 Lowder, that's you?

SW - R. JENCO - DIRECT

1 A That's correct.

2 Q Okay. Investigator Lowder, how long have you worked
3 with the Sheriff's Office?

4 A A little over five years.

5 Q Okay. And how long have you worked in law enforcement?

6 A I've been in law enforcement for 15 years and I've been
7 in investigations for three.

8 Q So you were in investigations when this case came about
9 in July of last year?

10 A I was.

11 Q Okay. How did you become involved in this particular
12 case?

13 A As an investigator we're on-call, and we're notified by
14 deputies that respond to certain instances if they need an
15 investigator to come out. And so the night of this
16 incident I was notified by Deputy Barnes.

17 Q Okay. What did you do once you were notified?

18 A Well, I notified my supervisor and of course I
19 responded to McLeod's Hospital.

20 Q Once you got to McLeod what did you observe and what
21 did you do?

22 A When I arrived at McLeods the victim had already been
23 taken in for emergency brain surgery so I did meet with
24 the deputy that was there and then began talking with some
25 of the family members.

S.W. - DIRECT

1 Q Okay. What family members do you remember being
2 present?

3 A I spoke with Debra, the mother, and I spoke with
4 Jermaine, and I also spoke with K.P.

5 Q What information, if any, did Jermaine Mayweathers have
6 at that time to give you?

7 A He didn't give me a whole lot. I basically was just
8 trying to figure out who, who these people were 'cause I
9 didn't know, and what their names were and their
10 information and so he gave me -- I asked him what his name
11 was. His mom, I didn't know at that time Debra wasn't his
12 mom. I got his mother's information and her phone number
13 and where she lived and his father's information and
14 basically a little bit about what happened that day.

15 Q Okay. What information did you have about what
16 happened that day?

17 A He told me that he was fine, that he had began throwing
18 up, and then went to sleep and was having problems
19 breathing. He also mentioned to me that he had bumped his
20 head the night before.

21 Q Okay. Was that the extent of what he told you that
22 night at the emergency room?

23 A Yes, sir.

24 Q Okay. After you talked to the family member and the
25 defendant how did you proceed?

SW - R. JENCO - DIRECT

1 A Well, at that point mainly trying to see what was gonna
2 happen with the victim and see what was gonna happen with
3 the surgery and if he was gonna be okay. From that point
4 on, of course I obtained a consent to search from Debra
5 because I was concerned about what might be at the house
6 that could be used as evidence, if this child was injured
7 with an object or if there was any kind of evidence that
8 could be tampered with. So I obtained consent to search
9 from Debra and then of course had forensics go out and do
10 the search.

11 Q All right. Did at any point you take part in any of
12 the two searches that went on?

13 A I did not that night because I wanted to stay at the
14 hospital with the family and talk with them and see what
15 was gonna happen with the child, and but I did on the
16 second search when the search warrant was obtained.

17 Q So you were present at the house. As your
18 investigation progressed did you interview certain
19 individuals with regard to what was going on with the
20 victim?

21 A I did. I interviewed all family members. I
22 interviewed because -- at that time I didn't know what
23 might have happened and who was there. I interviewed the
24 defendant Jermaine. I interviewed his father, Mr. Willie
25 Gerido, and I interviewed Debra Williams, the mother.

SW - R. JENCO - DIRECT

1 Q Did you -- you did an interview with Jermaine; is that
2 right?

3 A That's correct.

4 Q Okay. Was that interview recorded?

5 A It was.

6 Q And what method did you use?

7 A At the Sheriff's Department we have an interview room
8 and we have a cassette tape recorder. We hadn't moved
9 into digital yet so we still had cassette, and I recorded
10 it on cassette tape recorder.

11 Q Is that same statement what's already in evidence as
12 State's 6?

13 A Yes, sir.

14 Q When you took this statement who was present?

15 A Myself and Lieutenant Lutcken with forensics and
16 Katrina Andrews with DSS. Of course the defendant
17 Jermaine and his father was present for his Miranda.

18 Q Okay. So you read him his Miranda warnings as they're
19 known?

20 A That's correct.

21 Q All right.

22 MR. RICHARDSON: Your Honor, at this time may we go
23 ahead and publish the statement?

24 THE COURT: Any objection at this time, Counsel?

25 MS. WINGARD: Just the continuing objection.

SW - R. JENCO - DIRECT

1 **THE COURT:** All right. In terms of the basic
2 background? Are you going to go into that in terms of
3 Miranda?

4 **MR. JEPERTINGER:** Yes, sir, I can go ahead. I can
5 go ahead and do that.

6 **THE COURT:** Do that first please.

7 **MR. RICHARDSON:** Okay.

8 **BY MR. RICHARDSON:**

9 **Q** Investigator Jenco, I'm gonna show you State's Exhibit
10 3 which is, I believe, is for identification only at this
11 point. Could you identify what that is.

12 **A** This the Miranda warning that I read to the defendant
13 and his father. The Sheriff's Office has a form that we
14 use. And he of course signed off waiving his rights to
15 speak to me along with his father.

16 **THE COURT:** The court reporter and I have that
17 marked into evidence now.

18 **MR. JEPERTINGER:** It is in evidence?

19 **THE COURT:** Yes.

20 **MR. RICHARDSON:** Thank you, Your Honor.

21 **BY MR. RICHARDSON:**

22 **Q** Investigator Jenco, is that the form you used to give
23 him his Miranda warnings?

24 **A** It is.

25 **Q** What exactly does that form say?

SW - R. JENCO - DIRECT

1 **A** This form reads: "You have the right to remain silent.
2 Anything you say can and will be used against you in a
3 court of law. You have the right to talk to a lawyer and
4 have him present with you while you're being questioned.
5 If you cannot afford to hire a lawyer one will be
6 appointed to represent you before any questioning if you
7 wish. You can decide at any time to exercise these rights
8 and not answer any questions or make any statements. Do
9 you understand each of these rights as I have explained
10 them to you?" And then there's a blank and he can say yes
11 or no. "Having these rights in mind do you wish to talk
12 to us now?" Another blank and he can say yes or no. The
13 defendant Jermaine Mayweathers did write, yes, and he also
14 initialed each of these boxes beside those questions along
15 with his father who was present as a witness.
16 **Q** And is there also a signature on there where he waived
17 his right to have an attorney present?
18 **A** Yes.
19 **Q** So he agreed to speak with you?
20 **A** That's correct.
21 **Q** What was the setting for the statement?
22 **A** The interview was conducted in an interview room at the
23 Sheriff's Office which is located right outside of
24 investigations on the main hallway. It's a very
25 comfortable setting. It has a couch and chair and it has

Syv^w - R. JENCO - DIRECT

- 1 a small desk where you can sit. And he -- the defendant
2 would sit on the other side.
- 3 Q Was he there of his own free will or was he under
4 arrest?
- 5 A He was not under arrest. I was just investigating at
6 the time.
- 7 Q So he volunteered to come down with his father?
- 8 A That's correct.
- 9 Q Okay. Did he appear to understand the rights that you
10 read him and what he was there for?
- 11 A Yes, sir.
- 12 Q Okay. Did he seem confused by anything or have any
13 questions for you?
- 14 A No, sir.
- 15 Q All right. And he understood that the statement was
16 going to be tape recorded?
- 17 A Yes, sir.
- 18 Q His father understood that as well?
- 19 A Yes, sir.
- 20 Q That tape that was the product of that statement was
21 sent to our -- the Solicitor's Office, right?
- 22 A That's correct.
- 23 Q And it's since been placed on this disk that's already
24 in evidence?
- 25 A That's correct.

SW - R. JENCO - CROSS

1 MR. RICHARDSON: Your Honor, may we —

2 THE COURT: You may proceed to publish.

3 MR. JEPERTINGER: —publish.

4 (State's Exhibit 5 was published to the jury.)

5 BY MR. RICHARDSON:

6 Q Investigator, when you got this statement you hadn't
7 gotten the 9-1-1 tape yet?

8 A No.

9 Q So that's why you didn't know what was on it?

10 A Exactly.

11 Q Kind of in conjunction with taking this statement from
12 the defendant you also talked with medical doctors and
13 pathologists and whatnot?

14 A That's correct.

15 Q All right. Those things taken together, is that why
16 you decided to charge Jermaine Mayweathers at the
17 conclusion of everyone else?

18 A That's correct, and the elimination of people in the
19 household.

20 Q Okay. Please answer any questions Ms. Wingard has
21 please.

22 **CROSS-EXAMINATION**

23 BY MS. WINGARD:

24 Q Investigator Jenco, you participated in what is known
25 as the second search; did you not?

SW - R. JENCO - CROSS

1 A That's correct.

2 Q And during that time there were other belts found?

3 A That's correct.

4 Q Can you recall where those other belts were found?

5 A Numerous locations in the house.

6 Q Various places? Were they -- were they in plain view?

7 Were they in closets? Can you recall?

8 A No, they were -- most of them were in plain view.

9 Q Out---

10 A I think some of them may have been her daughter's
11 belts.

12 Q Okay. But they were out various places?

13 A Right.

14 Q You didn't do any sort of DNA analysis of anything; is
15 that correct?

16 A Actually, we did a DNA swab of the defendant and also
17 Mr. Willie Gerido. Voluntarily they consented to give me
18 a DNA swab. Due to the first night at the hospital the
19 doctor there recognized a tear, a small tear in the anus
20 of the victim. And I also work sexual assault cases also,
21 and so I was very familiar with that protocol and we did
22 not know at that time, you know, what we had. So of
23 course in investigating we always, you know, try to
24 compare DNA just in case this child may have been sexually
25 assaulted.

SW - R. JENCO - CROSS

1 Q There was no evidence, though, of any sort of sexual
2 assault. That was ruled out in the investigation?

3 A That was ruled out. There was no evidence of sexual
4 assault.

5 Q But I am asking you if you did any DNA analysis of the
6 belt, anything in the house. I know you -- they gave you
7 the sample but there are no DNA results anywhere?

8 A No.

9 Q Now you took a number of statements from individuals.
10 One of those people you took statements from was
11 Ms. Williams, the mom, is that correct?

12 A That's correct.

13 Q And do you recall during her statement to you that she
14 said, in fact, she did beat the boys Wednesday night?

15 A I don't recall exactly but I know she said that she had
16 disciplined them before.

17 Q And can you recall that it was Wednesday night?

18 A I can't exactly.

19 Q Can I -- let me show you the statement. This is on
20 Page 13 --

21 A Okay.

22 Q --of the statement. And actually you and Investigator
23 Lutcken were doing it together. And what did he ask her?

24 A Lieutenant Lutcken asked Debra when was the last time
25 you spanked them, and she responded, I spanked K.P. and

SW-R. JENCO - CROSS

1 Child Wednesday.

2 Q Okay. And then it says right here she -- she further
3 responds.

4 A And she says, Wednesday night. He says, okay. She
5 says, Wednesday night because they was running and playing
6 and like real, being real rough, like falling. And she
7 kept telling them to calm down and stop.

8 Q Now let me also show you on the next page then. You
9 asked continuing on about that night. You ask that.

10 A I asked, okay, so they didn't break anything while they
11 were running and playing?

12 Q And then she responds, no. And then you say, any time
13 this week, and then she says...

14 A She responds by saying, "The blinds, no, they were up.
15 The blinds in the room, they was teared. The blinds up in
16 the room was teared down. That was Wednesday."

17 Q And let me then show you what's been marked as State's
18 Exhibit 11-A and -B. And that is -- those are torn blinds
19 in what's called the boys' room; is that correct?

20 A That's correct.

21 Q Okay. And even though the boys were sleeping generally
22 in the room with the bunk beds, the room without beds was
23 referred to the boys' room because when the girls were
24 there they were the ones that slept in the bunk beds?

25 A That's correct.

SW - R. JENCO - CROSS

1 Q Jermaine and his dad voluntarily came down to the
2 Sheriff's Department and gave you statements, ---

3 A Yes, ma'am.

4 Q ---the statement that we just heard. And one thing I
5 do want to ask you about, on the CD that we played there
6 was a gap. You didn't erase anything in there, did you?
7 That's when you were changing the tapes; is that right?

8 A That's correct.

9 Q We don't have any physical evidence connecting Jermaine
10 to the assault. I understand you built your case on the
11 doctor's testimony and his statement, but we don't have
12 any tangible physical evidence, do we, connecting him?

13 A We have the belt that was identified by K.P. and ---

14 Q And let me ask you, at what point did K.P. identify
15 that belt, what point in this investigation? When was he
16 shown that belt and how did he identify it?

17 A He was seen at the Care House of the Pee Dee which was
18 that following Saturday.

19 Q No, no. What I'm asking is when did he see this
20 specific belt and said, yes, that is the belt?

21 A When he met with the Solicitor's office to do this
22 testimony I'm assuming.

23 Q So recently?

24 A Yeah.

25 Q And he was just shown this one belt?

SW - R. JENCO - CROSS

1 A He gave us a very good description of the belt when we
2 had him interviewed at the Care House, and so we knew when
3 we did that second search warrant we were looking for a
4 belt.

5 Q And you found many belts?

6 A Wedid.

7 Q And you also know that he had said that Debra hit him
8 with a belt as well?

9 A Right, correct.

10 Q And of course when he was first interviewed he said
11 Jermaine didn't do anything.

12 A I would have to look back I don't remember exactly,
13 but I know he was very scared and he was very confused.

14 Q Thank you.

15 THE COURT: Redirect.

16 MR. RICHARDSON: Nothing, Your Honor.

17 THE COURT: All right, you may step down.

18 How many more witnesses we have? We need to take
19 the afternoon break?

20 MR. JEPERTINGER: We can take the afternoon break.

21 THE COURT: Afternoon break. You jurors, please if
22 you will go to your jury room.

23 (WHEREUPON, the jury was removed from the
24 courtroom at 3:25 p.m., and a break was taken.)

25 THE COURT: Bring the jury.

SW - K. LUTCKEN - DIRECT

1 (WHEREUPON, the jury was returned to the courtroom
2 at approximately 3:45 p.m., and the following proceedings
3 commenced in open court.)

4 THE COURT: Everyone okay?

5 Next witness please.

6 MR. JEPERTINGER: Yes, sir. We will call
7 Lieutenant Lutcken to the stand.

8 WHEREUPON,

9 KEITH LUTCKEN,
10 having been duly sworn by the Deputy Clerk of Court,
11 testified as follows:

12 THE DEPUTY CLERK OF COURT: Please be seated.
13 State your full name for the record.

14 THE WITNESS: My name is Keith Lutcken,
15 L-U-T-C-K-E-N.

16 **DIRECT EXAMINATION**

17 BY MR. JEPERTINGER:

18 Q For whom do you work, Lieutenant Lutcken?

19 A I'm employed with the Florence County Sheriff's Office.

20 Q How long have you worked for the Florence County
21 Sheriff's Office?

22 A Twenty-four years.

23 Q What are your responsibilities at the Florence County
24 Sheriff's Office?

25 A I'm a supervisor over the forensics/crime scene unit.

SW - K. LUTCKEN - DIRECT

1 Q And how long have been supervisor over the forensics
2 crime scene unit?

3 A Twenty years.

4 Q And part of your responsibilities as a supervisor in
5 the crime scene unit can you tell what that would entail?

6 A Yes, sir. I supervise the day-to-day operations of the
7 unit which includes our unit going out on crime scenes.
8 Also I supervise the evidence room, our impartment lot.
9 When I say also crime scenes, you know, I participated in
10 major crime scenes where my people go out and do crime
11 scenes and document scenes and collect evidence.

12 Q For lack of a better term since we're familiar with the
13 television, you would be considered CSI?

14 A That would be what we do, yes, sir. Wish it was that
15 good.

16 Q Now can you tell the jury how you got to be involved in
17 this case please?

18 A Yes, sir. July the 25th of '08 about somewhere around
19 7:30:28 that evening I was notified by the on-call
20 forensic person which was Corporal Bird, who has already
21 testified. He advised me that he was in route to McLeod
22 Regional Medical Center at that time in reference to a
23 possible child abuse case. And I advised him at that time
24 I was in another county and I advised him to let me know
25 as soon as he got to the hospital exactly what we had at

SW - K. LUTCKEN - DIRECT

1 that point and we'd go from there.

2 Q Okay. And what did you do as a result of that
3 conversation with Corporal Bird?

4 A Approximately probably about 30, 40 minutes later I
5 received a call from Lieutenant Brett Camp who is the
6 lieutenant over the investigations division, and
7 Lieutenant Camp advised that Renea Lowder, the
8 investigator on the case who is now Renea Jenco, was at
9 the hospital and she was speaking with family members. He
10 advised that the little boy, 5 year old had been taken to
11 surgery for emergency surgery due to the amount of
12 swelling he had to his head and he advised that they had
13 received a consent to search form from the mother for us
14 to go to the residence and look within the residence and
15 run the perimeter of the residence on the property for any
16 possible evidence.

17 Q So when you found out that a consent form, a consent to
18 search form had been signed by Ms. Williams, what did you
19 do in response to that?

20 A That time Lieutenant Camp advised that self and
21 Corporal Bird were going to be in route to the residence.
22 Investigator Jenco stayed at the hospital with the family.
23 I advised him at that time that I would meet them there at
24 the residence, which is located at Smith Mobile Home Park
25 on Gilbert Drive, lot 43. When I arrived on the scene

SW - K. LUTCKEN - DIRECT

1 there were patrol deputies already on the scene. Deputy
2 James Renfrow and Sergeant Steve Driggers, they were
3 securing the scene until we could get back to the
4 location.

5 Q Now -- excuse me just a second.

6 A Yes, sir.

7 Q When you're talking about securing the scene is that
8 normally making sure that no one goes into the property or

9 ---

10 A That's correct.

11 Q --access?

12 A Yes, sir, that's correct. Make sure that nobody goes
13 into the scene with, nothing tampered with, nothing is
14 destroyed, taken, or nothing else is brought in to
15 contaminate the scene.

16 Q And do they often use crime scene tape?

17 A Yes, sir, they do.

18 Q And for those in the room there's some, what I consider
19 yellow crime scene tape, against those exits back there.
20 Is that what we're talking about?

21 A Yes, sir.

22 Q Was that utilized in this case to your recollection?

23 A I don't think it was, no.

24 Q Okay. And sometime they do not use that, correct?

25 A Right. They were on the scene. They were waiting for

SW - K. LUTCKEN - DIRECT

1 us to arrive.

2 Q What did you do then, sir?

3 A When I arrived on the scene, like you said, Sergeant
4 Driggers and Jamie Renfrow, also a patrol deputy, they
5 were on the scene. Lieutenant Camp and Corporal Bird had
6 already arrived on the scene. Also Corporal Bird had
7 already started a series of photographs of the exterior of
8 the residence and was already going into the interior of
9 it. At that time I spoke with Lieutenant Camp who briefed
10 me some more details of the case and then we proceeded to
11 go inside to see what assistance we could be to Corporal
12 Bird.

13 Q Okay. Then what did you do, sir?

14 A At that time once we're inside the residence the
15 residence was fairly clean. It did not show any signs of
16 any foul play. It wasn't in disarray as if anybody had
17 broken in and, you know, tried to hurt anybody I should
18 say. Like I said, it was fairly clean. We were advised
19 when we walked -- when you walked into the front door area
20 you were immediately in the living room area. To the left
21 would be the kitchen and a little dining area. Then to
22 the right was a hallway and down that hallway was some
23 bedrooms and a bathroom. We were advised that EMS had
24 located a little boy, Child in the first bedroom to
25 the left on the floor. I'm sorry, to the right, excuse

SW - K. LYTCKEN - DIRECT

1 me.

2 Q Okay. And I'm just gonna show you, if you can here,
3 what we're talking about. If you could stand up.

4 MR. JEPERTINGER: If that's okay, Your Honor.

5 THE COURT: Yes.

6 BY MR. JEPERTINGER:

7 Q Just point to where -- what you saw.

8 A Okay. As I said, when you came in the front door of
9 the residence you immediately walked into the living room
10 area. To the left of it was a little dining set and also
11 the kitchen area. And like I said, you're in the living
12 room area. Immediately to the right was a hallway that
13 led down to a couple of bedrooms and then there's a
14 bathroom at the end of the hall way. EMS relayed to the
15 officer, I believe who was Eric Barnes, went to the
16 hospital that the child was found in the first bedroom to
17 the left -- I'm sorry, to the right. I'm looking at the
18 left. To the right when they went down the hallway.

19 Q All right. And so what did you do --you can have a
20 seat -- in response to that information that you just
21 showed us on State's Exhibit 2?

22 A As I said, Corporal Bird had already started a series
23 of photographs within the interior of the residence and we
24 just began looking around as I stated earlier that there
25 didn't appear there had been any type of fight or anything

SW - K. LUTCKEN - DIRECT

1 going on. There were inside the bedroom where Child
2 was located, there were some I believe there's a TV stand
3 and a couple of other little small pieces of furniture.
4 There were no beds in there. It appeared to be pallets.
5 And there was a pillow and blankets lying on the floor.
6 Q All right. Then what did y'all do? What did you do?
7 A At that time we're still monitoring, staying in touch
8 with Investigator Jenco to find out, you know, if any
9 developments had taken place, what further details that
10 she may have developed as a result of her talking with the
11 family members and also Jermaine which had been with him
12 all day. As a result we continued our search of the
13 residence trying to locate any items that could have
14 caused what we were advised was severe head trauma. At
15 that point we did not have any other details as to
16 injuries that the child had suffered. It's kind of being
17 in this case kind of walking into the dark. You didn't
18 really know what to look for, you know, when you went into
19 the residence. We were just looking for something that
20 could have been used. We did see in the dining room area
21 where there was a broken chair. There's also a broken
22 chair outside the front door that belonged to that set;
23 and at later time when we had spoke to Mr. Gerido,
24 Jermaine's father, biological father. He advised us at
25 that time that the chairs were all the time breaking so

SW - K. LUTCKEN - DIRECT

1 when they broke he just tossed them outside. And it was
2 apparent the one that was lying outside the front door
3 that we found was weathered. There was one that was
4 underneath the table that night that were inside the
5 residence or that was taken as evidence. You know, it was
6 examined for any blood, hair, anything of this type
7 nature, and nothing was found from there. We continued to
8 search, our search of the residence, taking more
9 photographs. And once we completed with the scene the
10 scene was secured, and we proceeded back to McLeod
11 Regional Medical Center.

12 Q Okay. Now the person taking the photographs would have
13 been?

14 A Corporal Bird.

15 Q Okay. Thank you.

16 A Yes, sir.

17 Q At that point you said you proceeded back to McLeod
18 Regional Medical Center. Can you tell us what you did
19 once you got back to the hospital?

20 A We were advised when we got back to the hospital in
21 speaking with Investigator Jenco by phone that the child
22 had been moved to pediatric intensive care unit. He was
23 out of surgery. At that time we proceeded that area where
24 we met with her and also Doctor Gerald Atwood who was the
25 attending physician for the child, and we met with them.

SW - K. LUTCKEN - DIRECT

1 and spoke with them.

2 Q Okay. What did -- did you have an opportunity when you
3 were at the PICU, the pediatric intensive care unit to see
4 Child while you were in there?

5 A Yes, sir, we did.

6 Q And what were your observations of Child please?

7 A My observations of Child When we entered the room,
8 of course he was laying on what we refer to as his
9 posterior side. He was on his back. He had the normal
10 tubes and everything running out of him. His head was
11 bandaged. We were not able to photograph any of his head
12 due to the bandaging from the surgery. It was obvious
13 that the head had a great degree of swelling just by
14 looking at him. He's a small frame child but the head was
15 severely swollen, and it was very obvious of that. Also
16 when we removed the sheets, pulled the sheets back, of
17 course Doctor Atwood was there with us. We began
18 examining Child at that time, and there were numerous
19 bruises all over his body to what we call the posterior
20 and anterior side, front and back. The bruising to his
21 body was fairly recent. We could tell that.

22 MS. WINGARD: Objection, Your Honor, I think that's
23 best left for medical testimony.

24 THE COURT: I sustain the objection to that
25 statement.

SW - K. LUTCKEN - DIRECT

1 THE WITNESS: I'm sorry.

2 BY MR. JEPERTINGER:

3 Q Okay. Go on in terms of bruises you did see.

4 A There were bruising to the front and the back side of
5 the body. You know, some of the bruising was significant;
6 some of it wasn't.

7 Q Was -- did some of the bruising look like a, in a
8 linear form?

9 A Yes, sir. We did locate one on his front side which
10 traveled from the right shoulder down towards his left
11 side. It was thin in appearance, and it looked like, you
12 know, possibly a belt may have caused it. We weren't sure
13 at that point what type of object that would cause that.

14 Q All right. Did you observe anything else on the child
15 at that time?

16 A Well, as I said, you know, just a severity of the
17 swollen to the head, also the bruising to the front and
18 backside. There was the bruising was extended from the
19 chest area down the legs so there's quite a bit of it.
20 Pretty much, you know, it was brought to our attention by
21 Doctor Atwood that there was a small tear to the anal
22 region which, you know, a kit-- we went ahead and did a
23 kit, a sexual assault kit, just in case as a precaution.
24 We did perform that on him before we left the room.

25 Q Okay. And then -- and after you observed what did you

SW - K. LUTCKEN - DIRECT

1 do after you did the sexual kit, I guess, or...

2 A Well, a series of more photographs were taken of the
3 victim. And once we talked with Doctor Atwood, then we
4 decided at that time, you know, that best to leave.

5 There's nothing else we could do at the hospital and we
6 left at that time.

7 Q Can you tell us what you did in this case?

8 A As far as in the unit?

9 Q Well, yes, if---

10 A Well, I mean, further after the unit, after we had left
11 the unit, you know, Investigator Jenco, she had finished
12 doing her questioning and everything. We decided, you
13 know, wrap it up at that point. The following day, which
14 would have been Saturday, she kept me in tuned as to what
15 was going on at the hospital. She advised that Child
16 was not doing well at all, and that at a certain point
17 they had decided life support was going to be pulled off
18 of him. That evening, some time on Saturday evening, she
19 called me and advised me that the life support had been
20 pulled off of him and that he had expired. At that time
21 we notified who we needed to with the coroner's office
22 where a autopsy could be set up for the Medical
23 University.

24 Q Okay. And then what did y'all do?

25 A As a result of that I advised Corporal Bird -- one of

SW - K. LUTCKEN - DIRECT

1 us always accompanies a deceased person to the autopsies
2 to observe and to collect the evidence from the
3 pathologist that was made – relayed to us. As I said, I
4 advised Corporal Bird on Saturday in that he would be
5 attending the autopsy on the 27th, which would have been
6 on Sunday. He went down there and, you know, as a result
7 of it Investigator Jenco continued her investigation and
8 kept me impressed as to what was developing as she was
9 going along with it.

10 Q All right. And what did you do then?

11 A Okay. As a result, Doctor Erin Presnell with the
12 Medical University contacted me on Sunday evening after
13 the autopsy results were in, or the preliminary I should
14 say, preliminary results were in. Based on what she
15 advised me of we began to increase our investigation into
16 the fact, you know, that something had to have happened at
17 the residence on the 25th, the day of the 25th, when he
18 was rushed to the emergency room. On that Monday, you
19 know, again speaking with Doctor Presnell, again she
20 advised me further they had done some more tests. There
21 were some other things advanced with the body and then she
22 communicated further with me, and at that time we took our
23 investigation further.

24 Q Okay. And when you took your investigation further
25 what did you do on the 28th after you had that

SW - K. LUTCKEN - DIRECT

1 conversation with Doctor Presnell?

2 A Just one -- on the 28th Investigator Jenco had been in
3 touch with Mr. Gerido about him coming to the law
4 enforcement center located in Effingham and also bringing
5 Jermaine with him in order to talk with us, give us
6 statements and Mr. Gerido agreed to do that, and they came
7 on their own free will.

8 Q And were you present when Jermaine signed this waiver
9 of Miranda warning rights form on State's Exhibit 3?

10 A Yes, I was.

11 Q All right. Along with, I believe, Ms. Andrews of DSS
12 and Investigator Jenco, correct?

13 A Yes.

14 Q Okay. And then you were, I take it, after you were
15 together with the father and Jermaine to sign that form,
16 did you take Jermaine to a separate room or how did that
17 operate, sir?

18 A No. They were brought into the interview room which is
19 located next to investigations division, and both of them
20 were brought in there. They were explained what the
21 process was and we asked them -- we advised them we wanted
22 to take a taped statement just to find out the facts of
23 what had happened that day. We wanted both of them to
24 give a statement. We also advised Mr. Gerido that we
25 would need his permission to get from Jermaine which he

SW - K. LUTCKEN - DIRECT

1 agreed to. You know, the room is, you know, 8 by 10, 8 by
2 12, you know, as Investigator Jenco explained. You know,
3 there's a couch and a couple of chairs in it and, I mean,
4 it's a comfortable setting where we sat in there and we
5 talked with both of them. Now once he agreed - Jermaine
6 agreed and his father agreed to sign for him giving
7 consent to go ahead and give the statement we asked Mr.
8 Gerido to step out while we did that.

9 Q Okay. And he gave that statement, I take it, that we
10 just heard?

11 A Yes, sir. He gave it freely.

12 Q All right. And after that what did you do?

13 A After the interview with Jermaine we spoke with him at
14 length; and after we finished interviewing him, then we
15 brought Mr. Gerido in. And we advised, you know, Jermaine
16 where he could wait. We took him to the investigations
17 division and that's where he waited until his father was
18 finished giving us a statement.

19 Q All right. And after that what did you do?

20 A After that the statements were concluded at that point.
21 I believe the mother came in that afternoon. If I'm not
22 mistaken I think it was that same afternoon and also gave
23 us a statement.

24 Q All right. Then what did you do after that? I keep
25 asking you the same question.

SW - K. LUTCKEN - DIRECT

1 A I'm sorry.

2 Q That's fine.

3 A I need to make a correction. It was actually on the
4 29th, the following day, after they had given the
5 statements that Ms. Williams came in and gave a statement.

6 Q Okay.

7 A Also on that day, the afternoon of the 29th we acquired
8 a search warrant for the residence and again went back to
9 the residence to look for anything further since we had
10 more details after talking with the doctors and kind of
11 locate any evidence that may be present.

12 Q Okay. And on the 29th when you went back and executed
13 the search warrant at 1421 Gilbert Drive, Lot 43, did you
14 find anything of interest in this case to you,
15 specifically, as crime scene investigator?

16 A We, as I said, due to the conversations with the
17 physicians, the linear mark that is located on his chest,
18 we did go in for the purpose of obtaining belts, if there
19 were any belts present. There were belts found in various
20 locations of the mobile home just like there would be
21 anybody's home. We did collect some of those belts. I
22 believe there's a total of eight belts collected. As a
23 result of any of the other wounds that were relayed to us
24 by the physician and the pathologist, we didn't, you know,
25 missed or locate anything that could have caused those

SW - K. LUTCKEN - DIRECT

1 wounds.

2 Q Okay. And at that point did you do anything else, sir,
3 in terms of this case?

4 A No, sir.

5 Q All right. And based on your conversations with the
6 physicians -- and don't tell me what they told you -- but
7 based on your conferences with the physicians and what you
8 perceived of who was in the home, did you discuss the
9 arrest of any particular individual with Investigator
10 Jenco?

11 A Yes, sir. As with any case we -- when we conclude our
12 investigation or as we're going along we have numerous
13 meetings where we discuss these cases, and it's not one of
14 these things where it's a fly-by-the-seat type of thing
15 where we just go ahead and name somebody. We don't do
16 that. I mean, we take into consideration, I mean, these
17 are people's lives that you're actually dealing with. And
18 after we have these meetings and we discuss what we have,
19 what the investigators have developed and we've developed
20 the appropriate individual, after deliberating we arrived
21 at conclusion that, you know, with only three of them
22 there that Jermaine Mayweathers was the appropriate
23 individual to be charged in this case.

24 Q Thank you very much. Answer any questions that the
25 Defense attorney may have for you.

SW - K. LUTCKEN - CROSS

CROSS-EXAMINATION1
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BY MS. WINGARD:

Q And Jermaine was not actually arrested, was he, because he is a juvenile?

A That's correct.

Q And he was 15 years old --

A Yes, ma'am.

Q --so he was petitioned?

A Yes, ma'am.

Q He wasn't actually arrested, correct?

A Yes, ma'am.

Q Let me talk a little bit about the belts that were found. Now the belts were found during what we referred to as the second arrest?

A The second search.

Q The second search, I'm sorry. Tell me, if you could, where the other belts were located. Now we had pretty specific information about where the belt that has been introduced was located, but where were the other belts located?

A Well, in the bedroom where the bunk beds were located and that particular bedroom is at the end of the trailer. Like I said, when you walk in the living room you made a right down the hallway there's a bedroom, then another bedroom. The last bedroom on the right is where the bunk

SW - K. LUTCKEN - CROSS

- 1 beds were. There was a closet in there that had sliding
2 doors to it. We found some of the belts in that closet
3 there mixed in with a bunch of clothes that were just
4 laying on the floor. Also we located belts in the next
5 room where Child was actually located, and then we
6 found belts in the master bedroom.
- 7 Q Did you just find this one belt in the master bedroom
8 that has been introduced?
- 9 A Yes, ma'am.
- 10 Q So the belts were in other parts of this house?
- 11 A Yes, ma'am, that's correct.
- 12 Q Now as I look through the photograph that had been
13 introduced by the State, I don't see any of the bunk beds
14 or that bedroom. Was there a particular reason you didn't
15 document that room?
- 16 A No, ma'am. You talking about from the first scene or
17 from the search warrant?
- 18 Q From the -- from the first from as I look at the
19 pictures?
- 20 A Corporal Bird was in there taking series of photographs
21 and the entire place should have been photographed. But I
22 mean, as to why that was not done I don't know.
- 23 Q Do you recall what those bunk beds look like? Were
24 they regular wooden stacked-on-top bunk beds?
- 25 A I believe they were standard wooden bunk beds. Time as

SW - K. LUTCKEN - CROSS

1 you entered the room the bunk beds were to your left.

2 They went down the wall; I do remember that. And I

3 believe they were typical wood.

4 Q And the bunk beds actually took up most of the room;

5 didn't it? On the diagram which I know it's not to-scale.

6 A Right.

7 Q The diagram makes them appear small, but in fact,

8 weren't they that -- and horizontal?

9 A No.

10 Q They were not?

11 A No. They're in the correct positions that's depicted

12 in the photograph.

13 Q Didn't they take up most of the room though? This

14 appears that they had only taken up about a third of the

15 room when, in fact, it was very close.

16 A In fact, I was getting ready to tell you they took up

17 about a third of the bedroom when you walked in. As I

18 said, when you walk into the bedroom immediately to your

19 left they went down the wall, and they probably took up a

20 third of that room.

21 Q But you didn't think it was important to document

22 those, or Corporal Bird did not?

23 A I did not photograph them; I don't know.

24 Q And you are his superior?

25 A Yes.

SW - K. LUTCKEN - CROSS

1 Q He is responsible to you?

2 A Yes.

3 Q Now you said that you observed Child at the
4 hospital. Did— and you were talking about his
5 front/back. Did you actually turn him over?

6 A Did we turn him over?

7 Q Yeah.

8 A Yes, we lifted him. Not lifted him but kind of pulled
9 him over, I mean, where it's not like we flipped him over.
10 We just kind of eased him over where we could observe
11 what was on his back side also.

12 Q And I do want to make it perfectly clear, though,
13 because you again mentioned the sexual assault. There was
14 no evidence of any sexual assault?

15 A No, ma'am.

16 Q Okay. That was just something that was discussed and
17 so that's why you asked for the DNA swab?

18 A We did it as a precaution, yes.

19 Q Did you — in talking about a chair and you, I'm —
20 from what you told me I think you in effect eliminated
21 that chair as having been used to inflict any injury?

22 A Which one?

23 Q Well, you said there was one outside.

24 A There's one outside the front door.

25 Q Right. And then you — and then you said there was a

SW - K. LUTCKEN - CROSS

1 — and we show in the photographs like a chair rail and
2 you were satisfied from Mr. Gerido's statement that in
3 fact that, those chairs were unstable and would fall apart
4 so you ascribed no importance to that; is that correct?

5 A No, that's not correct. I mean, we weren't just gonna
6 take his word for it. They were examined.

7 Q And---

8 A It was determined after his statement and also
9 examining the chairs that there was nothing there of any
10 evidentiary value.

11 Q Okay. I didn't mean you just took his word but you did
12 reach the same conclusion. You were in the room obviously
13 'cause you're the male voice on the tape or on the disk
14 besides —

15 A Yes, ma'am.

16 Q —Jermaine?

17 A Correct.

18 Q There were three of you in the room with him?

19 A Yes, ma'am.

20 Q And he was — he was — his father was then excluded
21 from the room?

22 A Yes.

23 Q But his father was the one that you sought permission
24 from before he gave that statement; is that correct?

25 A Yes, ma'am, that is correct.

SW - K. LUTCKEN - CROSS

1 Q And his father at that time was also still a suspect?

2 A Yes, ma'am.

3 Q And at what point did you eliminate him? When you
4 found out he was in New Jersey? Is that when you
5 eliminated him?

6 A Well, the investigation continued. I mean, we just
7 don't eliminate things.

8 Q Well, when you verified that he was in New Jersey?

9 A I mean, we verified that he had gone to New Jersey.
10 Supposed to be Anderson on a job and he wasn't there, but
11 then we found out he was in New Jersey. We did verify
12 that he was there. And you know, so we knew from that
13 particular day, you know, if these injuries occurred on
14 this particular day, that he wasn't responsible for them.
15 I mean, he was a good 15 hour away from here so we knew
16 not to look at him at that point.

17 Q And after you did the first search, that would have
18 been on the 25th on that Friday evening. You turned the
19 house back over to the family; is that correct?

20 A Yes, ma'am, after we finished our investigation we went
21 ahead and secured the location, turned it back over.

22 Q Why did you get a warrant to search after you had had
23 the consent originally?

24 A To -- we're advised by our attorney. We have a
25 departmental attorney, and he advised that it would be in

SW - K. LUTCKEN - REDIRECT

1 our best interest.

2 Q And it never hurts to have a warrant?

3 A And it never hurts to have it, right.

4 Q Thank you.

5 A Yes, ma'am.

6 THE COURT: Redirect.

7 MR. JEPERTINGER: Yes. I'd like to pre-mark this.

8 THE COURT: 24-A and -B for I.D. at this time.

9 (WHEREUPON, State Exhibits Nos. 24-A and were
10 marked for identification only.)

11 MR. JEPERTINGER: Do you have any objection to 24?

12 MS. WINGARD: Without objection.

13 THE COURT: 24-A and -B in evidence without
14 objection.

15 (WHEREUPON, State Exhibits Nos. 24-A and 24-B were
16 admitted into evidence.)

17 **REDIRECT EXAMINATION**

18 BY MR. JEPERTINGER:

19 Q Would you be able to identify 24-A and -B please?

20 A Yes, sir. 24-A would be the bedroom with the bunk
21 beds, a photograph taken by Corporal Bird. And 24-B would
22 be the bathroom that's just adjacent to that bedroom.

23 Q Is it safe to say - I know there are a number of
24 photographs that have been admitted into evidence, but
25 there were a lot more photographs taken of the scene; is

SW - K. ANDREWS - DIRECT

1 that correct?

2 A That is correct. There were -- we always go under the
3 premonition it's better to have more photographs than not
4 enough so a lot of photographs are always taken.

5 Q Okay. Thank you very much.

6 A Yes, sir.

7 Q Recross.

8 MS. WINGARD: None.

9 THE COURT: You may step down.

10 Next witness please.

11 MR. RICHARDSON: The State calls Katrina Andrews.

12 DEPUTY CLERK OF COURT: If you would, ma'am, place
13 your left hand on the Bible, raise your right hand.

14 WHEREUPON,

15 **KATRINA ANDREWS,**

16 having been duly sworn by the Deputy Clerk of Court,
17 testified as follows:

18 THE DEPUTY CLERK OF COURT: Please be seated.

19 State your full name for the record.

20 THE WITNESS: My name is Katrina Andrews.

21 **DIRECT EXAMINATION**

22 BY MR. RICHARDSON:

23 Q Ms. Andrews, for whom do you work?

24 A Florence County Department of Social Services.

25 Q How long have you been employed there?

SW-K. ANDREWS - DIRECT

1 A Twenty-three years.

2 Q What are your current job requirements and duties?

3 A My current job is now I'm working with intensive foster
4 care, provide services to children who need a higher level
5 of foster care than just regular foster homes.

6 Q Is that what you did July of last year?

7 A No. July of last year I was actually a child abuse
8 investigator.

9 Q All right. What are the duties of a child abuse
10 investigator?

11 A We are -- we're bound by law to investigate all reports
12 or allegations of child abuse and neglect.

13 Q Are you affiliated or you affiliated in any way or paid
14 by the Sheriff's Office?

15 A No, I'm not.

16 Q You work with the State?

17 A I work for the State.

18 Q All right. How were you notified about this case?

19 A The on-call worker that was actually on-call the day of
20 the night of the incident respond to the call, and then
21 the case is then transferred to the investigative unit and
22 the case was given to me.

23 Q All right. As a child abuse or neglect investigator
24 does your concern lie with every child in a house or just
25 the one that this call is about?

S.W. K. ANDREWS - DIRECT

- 1 A We're to assess the needs of every child that's in the
2 home.
- 3 Q Would Mr. Mayweathers at age 15 be considered a child?
- 4 A Yes, he would.
- 5 Q Okay. What did you do when you heard about this case?
- 6 A Upon receiving the case I met with Renea Lowder at the
7 time and was informed that there were going to be
8 appointments for the family to be interviewed. And so I
9 attended the interview with Jermaine and also Debra.
- 10 Q Okay. When Jermaine came in to be interviewed you were
11 present at the Sheriff's Office?
- 12 A Yes, I was.
- 13 Q And you also sat through the entire interview; is that
14 right?
- 15 A I did.
- 16 Q Were you present when he signed that waiver of rights
17 form?
- 18 A Yes, I was.
- 19 Q State's Exhibit 3 I believe it was.
- 20 A Yes.
- 21 Q You were there when he signed that?
- 22 A Yes.
- 23 Q Were you there when his father was in the room with
24 him?
- 25 A Yes, I was.

SW-K. ANDREWS -- DIRECT

1 Q What was your purpose there?

2 A To also be a part of the interview and to gather
3 information for my investigation also?

4 Q Were you there at least in part to see what was best
5 for Mr. Mayweathers at the time as well as the other
6 children?

7 A Yes.

8 Q At any time that this interview was going on or before
9 did he appear to be confused about why he was there?

10 A No.

11 Q Did he seem that he understood his rights and knew what
12 he was doing?

13 A Yes, he did.

14 Q Was there any part of that interview where he was
15 threatened or forced to say anything?

16 A No, he was not.

17 Q And you were present throughout the entire direction?

18 A I was.

19 Q Okay. What did you do after the interview?

20 A Well, after the interview that day I think I had
21 another report that I had to be on so I was not there for
22 the interview with the dad, but I was there the next day
23 for the interview with Debra. That morning I was also
24 present for the interview at the Care House with K.P.

25 Q All right. Did you do anything else with this case or

SW - K. ANDREWS - DIRECT

1 was that the extent of it?

2 A Well, usually when we get all of our information from
3 all our collateral contacts which would include law
4 enforcement and medical information. We have what we call
5 a staffing with our supervisors and ---

6 MS. WINGARD: I would object to that. I don't
7 think that would be a proper discussion for this.

8 THE COURT: I sustain the objection, Counsel.
9 BY MR. RICHARDSON:

10 Q Ms. Andrews, with regard to this particular case did
11 you do anything else other than listen to the interviews
12 and statements and make a decision on what your course of
13 action should be from a DSS' standpoint?

14 A Yes, I did.

15 Q That -- okay.

16 A Yeah, the case -- there was a finding of physical
17 abuse.

18 MS. WINGARD: Objection.

19 THE COURT: Counsel, that's rank hearsay in terms
20 of its admissibility under these circumstances. I sustain
21 the objection and strike that from the record.

22 BY MR. RICHARDSON:

23 Q Did you investigate any further after those statements
24 were made or ---

25 A Yes, I did, other family members.

SW - K. ANDREWS - CROSS

1 Q All right. So you interviewed other people?

2 A Yes, I did.

3 Q Ultimately K.P. or Jermaine, nobody was removed from
4 the home?

5 A No.

6 Q Okay. Please answer any questions that Ms. Wingard may
7 have.

CROSS-EXAMINATION

8
9 BYMS. WINGARD:

10 Q Ms. Andrews, when you did the witness, the interview
11 out at the Sheriff's Department with Jermaine, prior to
12 that time and prior to his signing his Miranda warnings
13 and his waiver of counsel did you ever take him aside and
14 have a one-on-one conference with him just the two of you?

15 A No, I did not.

16 Q So everything that you did allegedly for him was with
17 law enforcement there and with his father there?

18 A Right.

19 Q Thank you.

20 THE COURT: Redirect.

21 MR. RICHARDSON: That's all, Your Honor.

22 THE COURT: You may step down.

23 Next witness please.

24 MR. RICHARDSON: Your Honor, that's it for today.

25 Our next two witnesses are coming from out of town in the

1 morning.

2 THE COURT: All right. I have on the list Doctor
3 Erin Presnell from the Medical University. Is that a
4 witness?

5 MR. RICHARDSON: Yes, sir.

6 THE COURT: And Gerald Atwood, is that a witness?

7 MR. RICHARDSON: Yes, sir.

8 THE COURT: I was also informed from the Court
9 downstairs that they are using Doctor Presnell in terms of
10 their trial; is that correct?

11 MR. RICHARDSON: Yes, sir.

12 THE COURT: Well, what time is the doctor going to
13 be available?

14 MR. RICHARDSON: Your Honor, we've tried to contact
15 Doctor Atwood. He's originally scheduled to be here
16 around 11. We gave him a call and left a voice mail to
17 see if he could be here 10, 10:30. We have not received
18 any call back. He's coming from North Carolina.

19 THE COURT: All right. Jurors, give me your
20 attention. We'll stop here for the evening with the
21 information that Doctor Erin Presnell from the Medical
22 University will be testifying and Doctor Gerald Atwood
23 from North Carolina will be testifying. How long that
24 takes obviously no one knows. In terms of tomorrow, once
25 the testimony is closed and ended the lawyers have the

1 right to discuss it with you and then I charge you the
2 law. If per chance I got to the point in a reasonable
3 hour in the afternoon that I could charge you the law I
4 will give you the case for decision. Now what does that
5 mean to you? Well, once I give you the case for decision
6 then we're not going home at 5:00. I mean, if I give you
7 the case for decision at 3:30 in the afternoon obviously
8 we just don't stop at 5:00. Once I give you case for
9 decision you got to stay with it in terms of the
10 deliberations. And I would ask you just simply to make
11 preliminary plans in case I got the case to you in a
12 reasonable time in the afternoon that you would know that
13 I would certainly keep you together in regard to going
14 into a complete deliberation of this matter.

15 Does everyone understand what I'm saying? Tomorrow
16 might be the day that you would stay well beyond 5:00.
17 Once I give you the case for decision you just don't go
18 home at 5:00. Does everybody understand? Okay. Please
19 at least make preliminary arrangements in that regard for
20 me.

21 And so we come to the point of who will we have
22 available? Probably no one until 11:00. Is that where we
23 are?

24 MR. JEPERTINGER: Yes, sir. I told you I think we
25 will be running California hours tomorrow, Your Honor.

1 THE COURT: Don't blame me for those California
2 hours.

3 MR. JEPERTINGER: No, sir.

4 THE COURT: Folks, thank you for your time and
5 talent. Thank you for your attention to the testimony
6 today. Once again, I give you the admonition. Television
7 people have been in the courtroom today. Do not watch any
8 local television news under any circumstances and do not
9 read the Morning News under any circumstances before you
10 come back tomorrow. Hope you have a good night's rest.

11 Catch them the elevator. No one leaving now but the
12 jury. No one leaving the courtroom but the jury. 11:00,
13 I'm sorry. 11:00.

14 (WHEREUPON, the jury was removed from the
15 courtroom at 4:30 p.m., and court was adjourned to be
16 reconvened on September 23, 2009 at 11:00 a.m..)

17 THE COURT: Good morning, jurors. Everyone feeling
18 okay? Jurors, I am required to ask you this question and
19 I simply follow the rule in that regard. Please respond
20 if it applies. I had instructed you not to watch any
21 news, nor to read any local newspaper in regard to this
22 case. Has anyone received any information in regard to
23 this case from the news media in any format? If so, raise
24 your hand and let's talk.

25 (There was no response.)

SW - G. ATWOOD - DIRECT

1 **THE COURT:** All right. Let the record show there
2 is complete unanimity and the jury is in a pristine
3 position.

4 Call the next witness please.

5 **MR. RICHARDSON:** Your Honor, the State calls Doctor
6 Gerald Atwood.

7 **THE DEPUTY CLERK OF COURT:** If you will, sir, place
8 your left hand on the Bible. Raise your right hand.
9 **WHEREUPON,**

10 **GERALD F. ATWOOD,**
11 having been duly sworn by the Deputy Clerk of Court,
12 testified as follows:

13 **DEPUTY CLERK OF COURT:** Please be seated. State
14 your full name for the record.

15 **THE WITNESS:** Gerald F. Atwood.

16 **THE COURT:** Proceed.

17 **MR. RICHARDSON:** Thank you, Your Honor.

18 **DIRECT EXAMINATION**

19 **BY MR. RICHARDSON:**

20 **Q** Doctor Atwood, where do you currently work?

21 **A** I currently work at McLeod Children's Hospital.

22 **Q** And what do you do there?

23 **A** I'm a pediatric and critical care physician.

24 **Q** Okay. And how long have you been a doctor?

25 **A** About 45 years.

SW - G. ATWOOD - DIRECT

1 Q Okay. What kind of education, training background do
2 you have?

3 A Well obviously medical school. I did one year
4 residency in internal medicine, three years of residency
5 in pediatrics, three years of training as a pediatric
6 cardiology, and about 15 years on-the-job training in
7 critical care and they qualified me for the critical care
8 Board examinations.

9 THE COURT: Doctor, for the record please identify
10 the institutions for me.

11 THE WITNESS: Oh, I'm sorry.

12 THE COURT: Please start with college.

13 THE WITNESS: Medical school with the University of
14 Illinois in Chicago. My residency was at University of
15 Illinois Hospital Systems in Chicago. I had fellowship
16 training in cardiology was at Duke University. And I
17 practiced cardiology and critical care at Vanderbilt
18 University in Nashville at the Barnwell Clinic in North
19 Dakota and here at McLeod in Florence.

20 BY MR. RICHARDSON:

21 Q How long have you been at McLeod?

22 A About 17 years.

23 Q Have you ever testified in court before as an expert?

24 A Yes, I have, many times.

25 Q Okay. Do you know about how many times?

SW - G. ATWOOD - DIRECT

1 A All total, I don't know, maybe 20, 25 times.

2 Q Okay. In what areas have you been qualified as an
3 expert witness?

4 A In child abuse, critical care, cardiology I guess I've
5 had some cases.

6 Q Have you ever been qualified in pediatrics?

7 A Oh, yes.

8 MR. RICHARDSON: Your Honor, I move to have this
9 witness qualified as an expert in the areas of pediatrics,
10 critical care, and child abuse.

11 THE COURT: What says Defense? You're entitled to
12 voir dire under the rule before I --

13 MS. WINGARD: I know Doctor Atwood. I don't need
14 to ask any questions.

15 THE COURT: He is qualified in those areas in terms
16 of the three areas and you may posit query that will
17 elicit opinion testimony.

18 MR. RICHARDSON: Thank you, Your Honor.

19 BY MR. RICHARDSON:

20 Q Doctor Atwood, you were employed at McLeod back in July
21 of last year; is that right?

22 A Yes, that's true.

23 Q Okay. Did you have occasion to work a case at McLeod
24 involving the victim here, Child ?

25 A Yes, I did.

SW - G. ATWOOD - DIRECT

1 Q How did you become involved?

2 A I first became involved in the evening I believe of the
3 25th of July when I got a phone call from Doctor Andrew
4 Rhea, who is a neurosurgeon, who had been called to the
5 emergency room to see this child. And he, in examining
6 the child and reviewing his CAT scans noted a small
7 subdural hematoma that he felt was insignificant, and he
8 was inclined not to operate on it because of how small it
9 was and the severe neurological condition of the child.
10 My -- I had not seen the child yet, but my advice to him
11 was that if the child was indeed that, doing that poorly
12 from a neurological standpoint, even if he felt that
13 wasn't necessarily going to improve him it was worth a
14 shot. You know, the one thing that we could do that maybe
15 would make a difference, maybe it wouldn't, but we had
16 nothing to lose by doing that. So on my advice he did
17 take the patient to the operating room. He did remove
18 that very tiny subdural, and he did remove a bone flap to
19 allow the swelling brain to have a little bit more space.
20 And so I physically saw the child when it came down to the
21 intensive care unit after the -- after surgery.

22 Q Now what is a subdural hematoma?

23 A A subdural hematoma is the collection of blood
24 underneath what we call the dura lining. Maybe if I can
25 back up a little bit. If you take from the outside in,

SW - G. ATWOOD - DIRECT

1 obviously we got our skin. There's a little bit of tissue
2 underneath the skin and then you can feel your skull, and
3 underneath the skull is a lining that we call the dura.
4 And the dura is kind of like -- kind of like a real thick
5 plastic like maybe a plastic tarp would be. You know,
6 it's thicker obviously than any kind of, you know, garbage
7 bag or something like that, but it's a thicker type
8 membrane and it's kind of the thing that encases the brain
9 and kind of holds the brain in place so that it's not
10 right up against the skull. And then there's a -- then
11 there is not there -- and there's something like a little
12 bit of space between that dural membrane and the skull.

13 Then there is another lining that's kind of like
14 saran wrap that directly covers the brain and between the
15 dura and the brain, and there's usually no space that you
16 see normally but those two membranes can separate. And so
17 if you get -- and there's blood vessels that go between
18 those membranes. So when you get bleeding in there those
19 membranes separate out and make a space, and that's where
20 the blood clot forms. So when we see blood in that space
21 that's called a subdural hemorrhage or subdural hematoma.
22 And they can be very tiny, just a line of blood, or they
23 can be big and create a major pressure on the brain
24 itself.

25 Q So that was my next question. Why is the size

SW - G. ATWOOD - DIRECT

- 1 important?
- 2 A Well, this -- in the -- the skull or inside the skull
- 3 is a very finite space. It does not have the capability
- 4 of expanding. So normally the brain pretty much takes up
- 5 all the space in there with these linings on there to
- 6 protect it from the outside. And there's a little bit of
- 7 fluid both inside the brain, you know, little -- the
- 8 little lakes or little openings inside the brain. And
- 9 then there's a little -- there's fluid also kind of
- 10 surrounds the brain. And this brain, and it's kind of a
- 11 little bit of a bumper so when we shake our head like this
- 12 we don't literally beat our brains out by the brain going
- 13 back and forth. And so if something happens to the brain
- 14 that either a big clot were to form, then it would be real
- 15 big either, maybe an ounce or two of blood, that's going
- 16 to put pressure on the brain and move it. And it doesn't
- 17 have any place to move to. So when that clot forms it can
- 18 press on the brain and cause whatever area it's pressing
- 19 on or if it's -- if the brain is being pressed against the
- 20 other side, or in worst cases, pressed downward into the
- 21 neck, it can cause serious malfunction and permanent
- 22 injury to the brain. So you can have normal brain that
- 23 gets under pressure from that blood clot and it can, you
- 24 know, start to perform abnormally.
- 25 Q So the bigger the hematoma the worse off you are?

SW - G. ATWOOD - DIRECT

1 A Exactly.

2 Q All right. And what was the hematoma like in this
3 victim?

4 A This was very, very small, less than -- weighed less
5 than a quarter of an inch and one very small area.

6 Q How did this hematoma reflect or associate with his
7 status, his injury that you saw?

8 A Oh, I would suspect that given how he presented in the
9 emergency room, after reviewing that and then how I saw
10 him and subsequently took care of him, that hematoma would
11 probably not -- nobody would even know he had that unless
12 it got bigger. If it stayed the size it was he'd be -- he
13 probably wouldn't have any symptoms and nobody would even
14 know it was there.

15 Q So is it your opinion that that hematoma isn't
16 consistent with what could have caused his ---

17 A No, it was insignificant. We only had it removed
18 because it was there and it was something that we could do
19 something about. I mean, he appeared to be in a pretty
20 hopeless situation as it was, and we were just looking for
21 anything that we might be able to do to help him.

22 Q So what condition was he in when he got to you?

23 A Well, he -- he came -- when he came to see -- when I --
24 when he came down to intensive care unit and I was there
25 waiting for him and I examined him, he basically had no

SW - G. ATWOOD - DIRECT

1 neurological function whatsoever. He was on a ventilator.
2 He did not respond to pain. His pupils were fixed and
3 dilated which means that your brain stem or the lower part
4 of your brain that where the nerves come out that go to
5 your eyes and face and everything else were severely
6 damaged and were nonfunctioning. Normally when you shine
7 a light in somebody's eyes their pupils get small, and his
8 had no -- his were -- his pupils were wide open and they
9 did not react to light at all. And that's usually a sign
10 of pretty, pretty terminal brain injury.

11 Q Okay. So you mentioned that his brain was swelling.
12 Where was it swelling?

13 A It was -- the brain was swollen all over, both left and
14 the right side with the right side a little bit more
15 swollen than the left. In fact, it was bulging a little
16 bit into this, those little holes that I said were in the
17 brain that you can buy some space. And part of that right
18 side of the brain was kind of pushing into that area a
19 little bit.

20 Q I know you got him after, you said after surgery. Were
21 there any skull fractures detected?

22 A We had a CT scan done before he went to the surgery.
23 That's how they picked up the swelling of the brain and
24 the small subdural hematoma, but there were no fractures.

25 Q So could you explain how you could have a brain injury

SW - G. ATWOOD - DIRECT

1 like you described and not have a fracture of the skull?

2 A Well, it all depends upon the mechanism of injury.

3 What causes the brain injury, whether it be a mild brain

4 injury or a severe brain injury, is how much force gets

5 delivered to the brain and over what area. And so if you

6 have a, something, I guess, you know, like a steel rod or

7 a hammer or baseball bat or something that is, you know, a

8 thin, you know, or you know, a narrow piece of object and

9 you strike the head with a certain amount of force you're

10 more likely to get a skull fracture than if you -- if

11 that -- if it's a bigger area that strikes the brain. I

12 mean, if you were to compare getting hit with a steel rod

13 versus getting hit with a 2 by 4 it's less likely that 2

14 by 4 is gonna to cause fracture because the general force

15 to the head is spread out over a larger area. It's not

16 hard and fast. You know, you can fall, you can fall out

17 of a highchair and get a skull fracture when you hit the

18 floor. You can fall out of a third story building and hit

19 cement and not get a fracture. So it's -- it doesn't--

20 the skull fracture doesn't necessarily correlate with the

21 degree of force that you're delivering.

22 Q Would a skull fracture help or hurt when it comes to

23 brain swelling?

24 A It would have no significance. You can have skull

25 fracture and have absolutely no brain injury at all. I

SW - G. ATWOOD - DIRECT

1 mean, and that's very common.

2 Q If you do have a brain injury is it -- I don't know
3 what terms to put this. Are you better off with a
4 fracture or without it?

5 A No, it would have -- it would play no role whatsoever.

6 Q Okay. As far as you know of, and examining him, did he
7 have any outer signs like on the skin, anything like that
8 that showed, you know, cuts or abrasions or anything of
9 that nature?

10 A You mean on his head?

11 Q Right.

12 A No, I did not see, you know, anything significant.
13 There had been a report when he came in that he supposedly
14 had bumped his head the day before and in the front of his
15 head. You know, I didn't see anything significant as far
16 as bruising or anything like that. And you know, he had
17 come back from surgery so even if he had some kind of --
18 the skin and tissue that covers the skull, at least in the
19 upper part, doesn't have any partitions so if there had
20 been any bleeding at the time of surgery, say on one side,
21 it could very easily spread across and give you some, you
22 know, some bruising, you know, on the front of the head or
23 something else. So I wouldn't have even thought it was
24 significant had I seen something like that.

25 Q Okay.

SW - G. ATWOOD - DIRECT

1 A It was more important what was going on inside the
2 brain than anything that was on the outside.

3 Q Okay. So what did you do with him when he got to you?

4 A Well, we had protocols for dealing with brain injury.
5 You know, we're limited to what we can do. You can't go
6 back and undo the damage that was done. What you try to
7 do is to maintain good blood supply to the brain and to
8 maintain adequate oxygen levels in the brain to try to
9 allow the brain to heal. Doctor Rhea, by taking that flap
10 off bought us some room for the brain to maybe swell to
11 the outside so that he wouldn't be having this pressure
12 down on into his neck. We limit the amount of fluids they
13 get. Sometimes we use diuretics. Sometimes we use drugs
14 to try to pull some fluid out. But it's mainly to try to
15 make -- try not to have any additional events that will
16 cause further brain damage that could be prevented.

17 Q Right. So ultimately the efforts failed?

18 A Right. When he -- when I -- when he came to the
19 emergency room they thought he was doing some movements to
20 stimuli although I think that those -- when I examined he
21 also moved when I, you know, pinched his toe or something
22 like that but it was a local reflex. It was -- his brain
23 was not telling him to do that. It's just that it's like
24 when you, if you touch a hot plate you pull your finger
25 back before your brain even knows that you touched the hot

SW - G. ATWOOD - DIRECT

1 plate. It's an automatic reflex that does that. So he
2 had reflex activity but it was through the spinal cord and
3 it was not -- it was not -- it was not a normal, you know,
4 response. He had no neurological activity. I think that
5 he -- I don't know whether he had him off the ventilator
6 for a while. He was trying to make a few, you know, per
7 minute efforts to breathe initially, but then over the
8 next twelve hours or so, you know, he lost that in fact.
9 By some time next afternoon he was -- he had no
10 neurological function at all and clinically was brain
11 dead.

12 Q Okay. That -- that's when he was taken off life
13 support?

14 A Yeah, right. And we did a brain flow study to see
15 whether there was any blood flow getting to the brain at
16 all. If we would have seen some we might have hung out a
17 little longer hoping that maybe something would change and
18 something would happen. But when we did that scan there
19 was absolutely no blood flow going to the brain which
20 meant that there was no hope at all that he would ever
21 recover any function.

22 Q So based on the type of injury that he had, what
23 immediate impact would his injury have on his neurological
24 function?

25 A Oh, I think that there's no question this was an

SW - G. ATWOOD - DIRECT

1 extremely devastating injury, and I don't think anybody
2 that would have this -- anybody had this kind of injury
3 would immediately lose consciousness or certainly not be
4 able to respond in any, you know, appropriate manner or
5 any controlled manner to anything. I mean, could he still
6 maybe move extremity, maybe he moan or make a noise, you
7 know, it's possible. But to be able to talk or walk or
8 follow a command or do anything else, that would not be
9 possible.

10 Q How about vomiting?

11 A Well, vo-- when -- any time there's an increase in
12 pressure in your brain one of the first symptoms is
13 vomiting. So vomiting is part of a brain injury. And you
14 can see it in a mild concussion or you can -- obviously
15 you can see it in a more severe injury.

16 Q How can you -- can you tell how long after the injury
17 takes place when the vomiting would occur, does it vary?

18 A Yes, you can -- it's whenever the swelling got
19 significant enough that it was pressing on that center.

20 Q Okay. Is there a way you can tell how long before he
21 made it to the hospital, maybe put a timeline on when this
22 injury could have occurred?

23 A Well, I think that, you know, I don't think I can
24 answer that because, you know, all I can tell you is that
25 there's no question in my mind that when that injury

SW - G. ATWOOD - DIRECT

1 occurred there was immediate change in this child's
2 functioning.

3 Q So you---

4 A So now whether that is what triggered a call to EMS or
5 whether he was watched for a while to see whether he would
6 get better and EMS was called, you know, it could be -- it
7 could have been minutes, two hours, you know, two hours.

8 Q Okay.

9 A I think he probably was gonna be dead in about another
10 15 minutes given how, how he was when EMS found him. He
11 was close to -- he was barely breathing and once he
12 stopped breathing he would have been unresuscitable.

13 Q So somebody with this injury couldn't sit down and eat
14 lunch?

15 A No, no, no, I mean, he would be nonresponsive.

16 Q Could there be any delay in the onset of the symptoms?

17 A Well, the answer to that question is no because -- if
18 you said whether, you know, could there be delay in the
19 swelling, could there be delay in some of the findings,
20 certainly, but the lights went out as soon as he sustained
21 that trauma to the head. I mean, he -- I mean, that
22 was -- if the -- if the injury was severe enough to render
23 him brain dead in a short period of time afterwards this
24 was a very, very severe trauma to the brain. So
25 whether -- if you would have got a CT of him five minutes

SW - G. ATWOOD - DIRECT

1 later, whatever, you might not see any abnormalities in
2 the brain but he would demonstrate the abnormalities.

3 There's no way you can, you know, I mean, you've seen
4 prize fights where somebody gets hit and when they
5 get that and that's less trauma than this by far and they
6 go down and go out. And so he went down and out.

7 Q Okay. So are there types of brain injuries where delay
8 is possible?

9 A Sure. I think probably everybody in this room, you
10 know, has heard these cases of well known people who had
11 skiing accident or something else and, you know, they were
12 checked out and people felt they were okay. And then they
13 go home and then several hours later they start not to act
14 right and, you know, there may be further delay before
15 they get medical attention and by that time the brain is
16 swollen and – or not swollen, but the brain has been
17 pushed down to where the brain gets down into the neck,
18 cuts off the blood supply and vital function, and they're
19 brain dead and can't survive. But the difference in those
20 cases are they have big – they may have suffered a head
21 injury but they have a normal brain under that. What
22 caused them to get into trouble was they had a bleed just
23 like we talked about, about that subdural or sometimes
24 they bleed between that dura membrane I told you about and
25 the skull and it's epidural. And that's usually what they

SW - G. ATWOOD - DIRECT

1 get. They get bleeding up there and it's usually a --
2 usually a bigger blood vessel and it bleeds fairly fast
3 and it starts to push the brain down so it's pushing
4 normal brain down and causing it to now start to function
5 abnormally. So that's an abnormal -- I mean, that's a
6 normal brain with an outside force pushing it down and
7 causing the damage.

8 In this case we had very little signs of hemorrhage.
9 There was hemorrhages in several areas but they were
10 small. We had a abnormal brain, a severely injured brain,
11 with ancillary evidence of bleeding that was not -- was
12 not a major player. So the fact it's --when you start to
13 develop neurological symptoms is when the brain starts to
14 become abnormal and not to function so that's why it's
15 twelve hours or so many hours later with these people who
16 get the bleed. They're fine right afterwards because
17 their brain is okay. But in this case we know that his
18 brain was injured with the trauma.

19 Q So there was immediate --

20 A So it would be immediate effect.

21 Q Okay. Could you tell by looking at him, the CT scans
22 and whatnot, how many blows he took? Was it one or
23 multiple?

24 A Well, you know, I can only surmise that. And if he had
25 just one blow I would expect it that we would have only

SW - G. ATWOOD - DIRECT

1 seen swelling of -- when we assume it was, say, on the
2 right side where we had this little blood clot. If -- and
3 that was the side that was more swollen than the left, we
4 would just see that right side swell up and push the left
5 side over, but the left side would still maintain a pretty
6 normal looking brain. The fact that that brain, that side
7 of the brain was also somewhat swollen, albeit not as much
8 as the right side, said that -- that that side had to get
9 hit too. So it -- I surmise that because I've got two
10 separate areas of swelling that are independent of each
11 other that there had to be more than one blow. Now how
12 many more, I couldn't answer that question.

13 Q All right. So you've seen in your forty some odd years
14 a lot of head injuries?

15 A Uh-huh, yes.

16 Q Could you explain to us kind of in everyday type
17 situations what type of thing could cause a head injury
18 this bad?

19 A Well, I guess you can start out by saying the things
20 that can't cause head injury this bad. And you know, we
21 see kids that get hit with baseball bats, baseballs thrown
22 at them at 50 miles an hour or whatever, something can
23 generate. Kids get hit with golf clubs. Kids fall off
24 jungle gyms, kids fall out of second story windows, kids
25 riding bikes get hit by a car, kids are in a car

SW'-G. ATWOOD - DIRECT

1 unrestrained get thrown into a windshield. This type of
2 injury is similar to those that we see where there is a --
3 where it be a car accident where somebody either gets
4 thrown from the vehicle and hits the pavement on the
5 outside, somebody who gets thrown from the back seat into
6 the front window, somebody who gets on riding a bicycle
7 gets hit by a car and they hit their head on the, you
8 know, with some velocity requires a fair amount of-- and
9 I don't know if you knew the word but, require a lot of
10 force to deliver this much impact to the brain to cause
11 this severe an injury. A simple trip and fall, even
12 getting hit with a baseball bat, falling out of a bunk
13 bed, normal roughhousing, that kind of thing, no, you'll
14 never see something-- and you won't even see, you know,
15 God made the brain and the skull pretty, pretty resistant
16 to all that.

17 Q Would he being 5 years old, would his age and
18 development make any difference?

19 A You know, there's variables. You know, the younger you
20 are your skull isn't quite as thick so it doesn't absorb
21 quite as much of the force so it -- you would probably get
22 more brain injury with a little bit less force. You know,
23 not like a lot less force but, you know, a little less
24 force. And there's -- by five years of age there's not
25 much space, you know, that the brain can get whipped

SW- G. ATWOOD - DIRECT

1 around in like it is in a small infant. On the other
2 hand, kids with -- kids with brain injury are felt to do
3 better than adults because they got better blood supply,
4 they got healthier tissues, you know, so it kind of gets
5 to be a tradeoff. So I think from the standpoint hat
6 would it take less force to give you the same degree of
7 injury just because he was 5, not so much that you could
8 be able, you know, to tell the difference. You know,
9 theoretically, yes, but we're not talking about routine,
10 you know. Even with an adult tossing a kid around or
11 something like that, even if he hits his head he's not
12 going to develop an injury like this.

13 Q Apart from his head injury did you notice any other
14 injuries on his body?

15 A Yes. In fact, the -- when he was brought down from the
16 operating room the nurses were very quick to point out
17 some injuries that they had seen when they were getting
18 him on the table and the like. And he had-- he had
19 bruises on his chest and upper abdomen and his arms and
20 his legs. And these were not regular, you know, kind of
21 bruises that your kids get when they fall down and bump
22 into things or riding their bike and stuff. These were
23 patterned bruises, and by patterned bruises meaning that
24 you could see outline of that some object had struck him
25 that left a very distinctive pattern on him. And it was a

SW - G. ATWOOD - DIRECT

1 linear type of pattern so it was like he was hit by like a
2 ruler or, you know, some object that had lines on it that
3 left, you know, lines. And the other, as I recall, in as
4 I was preparing for this, that he -- that it was -- I
5 don't know whether the nurses pointed it out or I saw it,
6 but one of the bruises, I think it was on his chest, had
7 little circles in it. I can't remember whether two or
8 three circles. And I thought -- I think when the sheriff
9 investigators were there I thought that maybe he was hit
10 with like a piece of metal that had holes drilled in it
11 because these were like -- he had a kind of a reddish dark
12 bruise but there were like little pale openings or holes
13 in it. And so I thought that-- so I thought he was hit
14 with some--he could have been hit with some object that
15 would be about an inch or so wide that had -- that had
16 holes in it, you know, like a piece of metal for like a
17 swing set or something like that.

18 MR. RICHARDSON: Your Honor, I'd like to have this
19 photograph pre-marked for identification.

20 THE COURT: I.D. only. It's -- is it 24?

21 THE COURT REPORTER: 25, Judge.

22 THE COURT: Got you, 25.

23 (WHEREUPON, State Exhibit No. 25 was marked for
24 identification only.)

25 BY MR. RICHARDSON:

SW - G. ATWOOD - DIRECT

1 Q Doctor, I want to show you what's been marked as
2 State's Exhibit 25 for I.D. only at this point. Can you
3 identify what's in that photograph?

4 A Well, I see -- I see obviously a bruise. I see a
5 bruise that is in the lower part of his chest on I guess
6 in the left chest here. There's also -- I'm not sure what
7 this is up here. It looks like there's a circular type of
8 bruise up here. But I think this is the one that I was
9 talking about. See the circles there, there, there. I
10 think there's one up here too. And anyway, there's --
11 there are round like punched out areas that are, and this
12 picture kind of light brown compared to this underlying
13 kind of purplish bruise. And you can see there's a line
14 here and then there's a line right here, and I thought
15 this may have been one object. This may have been a
16 second blow and that you can see where I thought that
17 maybe this was a piece of metal or something that had
18 holes in it.

19 Q Okay. Is this the way the victim looked when you
20 examined him or that injury?

21 A Well, you know, it's been a year-and-a-half or so. I
22 -- as I recall, what I put in my note and what I recalled
23 is that he had these bruises that I thought were not --
24 were not normal routine bruises, but they were, you know,
25 pattern. That they were caused by an object, felt they

SW - G. ATWOOD - DIRECT

1 were certainly compatible with him being struck by some
2 object, and I thought and I commented at least to the
3 investigators that I thought that this was a, you know,
4 something that had holes in it.

5 Q Okay.

6 MR. RICHARDSON: Your Honor, I'd ask to move this
7 item into evidence.

8 THE COURT: Any objection?

9 MS. WINGARD: Yes, sir. My understanding that that
10 was not taken -- that was taken at MUSC; that that was not
11 taken by Doctor Atwood or anybody at McLeod. And it was
12 taken at autopsy and I don't think he has said that that
13 accurately reflects what he remembered.

14 THE COURT: At this time, Counsel, I need for you
15 to posit query to him concerning does he recall this
16 particular photograph depicting the injuries that he saw
17 at that time.

18 MR. RICHARDSON: Okay.

19 THE COURT: And I'll make a ruling then.

20 BY MR. RICHARDSON:

21 Q Doctor, does this photograph of this injury accurately
22 depict the way that injury would have looked when you saw
23 him?

24 A That is, to my recollection, that is what it looked
25 like when I saw him.

SW - G. ATWOOD - DIRECT

1 Q Okay. So that is an accurate depiction of when you had
2 it?

3 A That is right.

4 Q You did not take this picture; is that right?

5 A I did not take that picture.

6 Q Okay, but that is -- that is the victim Mr. Child ?

7 A That was the bruise that I thought was particularly
8 unusual because of these holes that I saw.

9 Q Okay.

10 MR. RICHARDSON: Your Honor, I again --

11 THE COURT: Any further objection?

12 MS. WINGARD: I would have my objection continuing.

13 THE COURT: Objection will continue. Objection is
14 overruled under State very Kohnaens, State versus
15 Martucci and State versus Holder. And you may use the
16 photograph now in regard to letting the jury see what was
17 pointed out with you lawyers kind of at the bench.

18 Doctor, step down there and let him --

19 MR. RICHARDSON: Doctor. Would you come down here
20 with me a sec.

21 (WHEREUPON, State Exhibit No. 25 was admitted into
22 evidence.)

23 BY MR. RICHARDSON:

24 Q I know this picture isn't very large and may be kind of
25 difficult to see. Best of your ability could you show the

SW - G. ATWOOD - DIRECT

1 jury exactly what we're looking at here.

2 THE COURT: Doctor, you got to speak up now because
3 under our rules we got to take down every word that you
4 say.

5 THE WITNESS: I'll do my best.

6 THE COURT: All right.

7 THE WITNESS: Well, if you look at this picture and
8 I'll see and -- you want to pass it?

9 BY MR. RICHARDSON:

10 Q Doctor, you can just come down as you show them.

11 A All right.

12 THE COURT: Keep your voice up.

13 THE WITNESS: There's a kind of a purplish looking
14 pattern through here. If you look at, you see these lines
15 that I'm talking about, these linear lines here, and you
16 can -- this one is a little bit more obscured up here but
17 there are definite lines. And I don't know what this area
18 is up here and, you know, that could have been from a
19 electro placed or something else, so I'm not gonna comment
20 on that. But this is the one that I was particularly --
21 and if you look right here, here, look up in here, and
22 here, you can see circles, round circles. Can you see
23 that?

24 THE JUROR: No.

25 THE WITNESS: Well, you have to look at -- right --

SW - G. ATWOOD - DIRECT

1 and you almost have to kind of wave the thing a little bit
2 but, see, it's purple here.

3 THE JUROR: Uh-huh.

4 THE WITNESS: And yo u see this line, and on the
5 other side of the lines are these little circles that are
6 kind of somewhat evenly spaced in there.

7 THE COURT: Doctor, just kind of show it to them.
8 Don't let -- you can't have communication with the jurors
9 themselves.

10 THE WITNESS: Oh, I'm sorry.

11 THE COURT: I understand. I understand. Just
12 explain it to them. Explain it to them on that end. You
13 may do that.

14 THE WITNESS: You see the purple bruise. Then you
15 see the lighter kind of whitish or light tan circles that
16 are inside the one line.

17 THE COURT: You may point it out on the photograph.

18 THE WITNESS: Here's these linear bruises. And
19 then if you look in this big purplish area in here there
20 are circles that are here. And you can see -- and they're
21 well-defined circles.

22 BY MR. JEPERTINGER:

23 Q All right. You can have a seat.

24 A (Witness complies.)

25 Q Doctor, I want to show you what's been marked as

SW - G. ATWOOD - DIRECT

1 State's Exhibit 18 already in evidence. Is this object
2 consistent with something that could have caused that type
3 of injury?

4 A Well, all I can say is it has circles; it's linear.
5 You know, yes, it could.

6 Q Okay. Where else did you say he had bruises on his
7 body?

8 A He had, as I recall, he had bruises on his arms and
9 also on his legs.

10 Q Now you couldn't ultimately find a cause of death; is
11 that correct? I mean, it's not your job.

12 A Well, you know, we have to -- we obviously have to, you
13 know, have a medical diagnosis as to cause of death. And
14 you know, I think it was pretty obvious that this was a
15 severe head injury. And there was evidence because of the
16 bleeding that we saw that it was -- it was secondary to
17 trauma.

18 Q So what is his death consistent with?

19 A Well, it was -- it was a traumatic brain injury. And
20 we did not have any explanation as to how this injury
21 could occur so, you know, it has, you know, so where we
22 have situations like that the conclusion is that this must
23 be some kind of inflicted head injury by somebody who was
24 not telling us what really happened.

25 Q Now how do we know by looking at the bruise that this

SW - G. ATWOOD - CROSS

1 thing isn't, you know, weeks old?

2 A Well, you know, this is an acute bruise. I mean, the
3 color of it, the red and purplish color of it means that
4 it's fairly recent. We can't date that as far as minutes
5 and hours, but it's certainly I would say not more than 24
6 hours old for sure.

7 Q Okay.

8 A And but it could be as recent as, you know, 10, 15
9 minutes.

10 Q All right.

11 MR. RICHARDSON: Beg the Court's indulgence one
12 moment.

13 THE COURT: All right.

14 MR. RICHARDSON: Doctor, please answer any
15 questions Ms. Wingard has for you.

16 **CROSS-EXAMINATION**

17 BY MS. WINGARD:

18 Q Doctor Atwood, you -- when you initially got into this
19 case you suspected that there might be some sexual abuse
20 in this child; is that correct?

21 A Well, I think that there was a mention. I think that
22 there -- that was one of the things that the nurses from
23 the operating room came down and were concerned about him.
24 And I think, you know --

25 Q And then you, you had enough concern in that regard

SW - G. ATWOOD - CROSS

1 that you told law enforcement and they took DNA swabs —

2 A Right.

3 Q —for various people?

4 A Right.

5 Q You ultimately concluded though that there was no
6 sexual abuse —

7 A No, no.

8 Q —is that correct?

9 A And when I — and even at the time I — the injury was
10 up near the anal opening but it was not in the, you know,
11 the anus itself. Now that doesn't mean that somebody
12 couldn't have attempted to put an object or do something
13 and missed and could create that injury so I didn't know
14 but, and I think, again, it was one of those issues that
15 you can't come back later and say, gee, why didn't we get
16 the, you know, get the evidence. So I did not have a high
17 index of suspicion, but I did feel that it was part of —
18 since we had a strange case with a lot of strange
19 circumstances I didn't want to overlook anything.

20 Q And so you ruled that out though?

21 A I think it did get ruled out, yeah.

22 Q You told us in the past that these bruises were not
23 necessarily contemporaneous with the head injury; is that
24 correct?

25 A Right. I don't think anybody can tell you when you're

SW - G. ATWOOD - CROSS

1 dealing with cutaneous bruises, you know, with specific,
2 specific timing as well as we can probably tell with a
3 head injury because of, you know, when you get a severe
4 injury your brain is obviously very critical of
5 functioning and you can't function so. I can set a
6 timeline for the head injury. I can't set a timeline for
7 the bruising but they were recent.

8 Q But they could be as much as 24 hours?

9 A I would have to say it's possible.

10 Q Now the subdural hematoma---

11 A Uh-huh.

12 Q ---the small subdural hematoma, would that be
13 consistent with somebody falling of a bunk bed? Is that
14 the kind of injury that you would have in that regard?

15 A Yes, that -- you could get that kind of injury, a very
16 small hematoma, and in some cases they may even, you know,
17 become larger.

18 Q Would an injury of this nature, that is, the subdural
19 hematoma --

20 A Uh-huh.

21 Q ---render this child's brain more vulnerable to a
22 subsequent occurrence?

23 A You know, there's some data coming out now that would
24 suggest certainly in shaking baby syndrome that it -- that
25 it -- that it may be a series of shakings that ultimately

SW - G. ATWOOD - CROSS

1 leads to some terminal event of, you know, of brain
2 damage. In trauma there's some evidence that repeated
3 concussions can lead to chronic brain problems, you know,
4 whether it be Parkinsons or some kind of brain problems
5 down the line and seeing that in some of the professional
6 athletes and the like. But I think--you know, I don't
7 think we'll ever know, you know, if the subdural occurred
8 the day before and whatever this trauma was, the next day,
9 it certainly doesn't diminish the fact trauma the next day
10 was not insignificant trauma. This was severe trauma. So
11 could there have been a factor there, yeah, but I don't
12 know how we'll ever know that. I think that the amount of
13 trauma to create the changes in this child's brain that we
14 saw as rapid as we saw it had to be pretty major trauma.

15 Q But it's fair to say that you could not exclude that as
16 perhaps some contributing factor to make this child's
17 brain more vulnerable?

18 A I would say it's very unlikely. And don't forget this
19 child also had other areas of hemorrhage. There was just
20 not -- that was the one that was approachable
21 neurosurgically. This child had blood in the bottom of
22 his brain. This child had some areas of some blood at the
23 lining between the upper part of the brain and the lower
24 part of the brain. This child had bled in more than one
25 place, and that isn't explained by the fall from the bunk

SW - G. ATWOOD - CROSS

1 bed.

2 Q Doctor, do you remember when I asked you about the
3 vulnerability of the injury the night before and you said
4 you would have a hard time refuting that. Do you recall
5 your testimony previously?

6 A Well, right. I think that-- I think that there's --
7 like I said earlier, there's data out there, you know,
8 that would suggest that there -- and it's not been proved
9 and I don't think anybody is gonna say that's scientific
10 fact, but there's some suggestion that that may be. Do I
11 think it was operative in this case? No.

12 Q I'm not -- when you say it's not operative you mean
13 the --

14 A I don't think it's a player. I think that all the
15 injury we saw was a result of major trauma to the brain at
16 that -- at that time.

17 Q You would agree though that every person will react
18 differently to some sort of brain trauma?

19 A No, but we're not talking about, you know, mild
20 concussion or something. We're talking about something
21 equivalent to, you know, riding your bicycle and getting
22 hit with a car and they hit you in the head. I mean,
23 we're talking about big time trauma to cause this kind of
24 injury.

25 Q You're talking about enormous amount of force.

SW - G. ATWOOD - CROSS

1 A Right.

2 Q And I think you characterized it in the past as almost
3 somebody in a supernatural state to require this much
4 force?

5 A Yeah, I think-- I think if you say this kind of--
6 that this trauma was inflicted by somebody, I think it was
7 somebody who wasn't using normal strength to restrain or
8 to admonish or something else. This was a result of a lot
9 of emotional intensity.

10 Q Now you also talked about the weapon or the object that
11 would have been used. You said that it would be
12 approximately an inch wide. Is that from --

13 A From -- if you looked at that picture, you know, and
14 that's all I've got to go by now. You know, could one
15 object have made all three of those lines? You know, I'd
16 have to see the object to say for sure. And again, if it
17 -- if it was tilted on the side then you're not gonna see
18 the whole, the whole width of it. You're only going to
19 see the part of it that made contact with the skin. So
20 you know, the issue of the belt was raised. Maybe not the
21 whole belt struck him at that point so I, you know, all I
22 can say is that -- and you look at the picture estimating
23 that that was about an inch or so wide and it had these
24 circles in it and that's all I can say.

25 Q And from my looking at the picture it appeared that the

SW - G. ATWOOD - REDIRECT

1 circles were right on top of each other or almost
2 connected?

3 A There was -- you could see distinct circles but..

4 Q These are the circles that you're talking about right
5 there; is that correct?

6 A Uh-huh.

7 Q And so they're almost run into each other. They almost
8 overlap ---

9 A May I look ---

10 Q ---right?

11 A You can see there's distinct lines around each one of
12 them. They're not -- it's not one whole area.

13 Q But they're very close together?

14 A Yeah.

15 Q I have no further questions.

16 THE COURT: Redirect.

17 **REDIRECT EXAMINATION**

18 BY MR. RICHARDSON:

19 Q Doctor Atwood, would--could somebody 5 foot 11,
20 190-pound be capable of inflicting the damage that was
21 inflicted on the victim?

22 A I would certainly think so.

23 Q Okay. Based on your medical expertise did Child
24 have any chance of survival when he got to the
25 hospital?

SW - G. ATWOOD - REDIRECT

1 A No. No, he did not. He was -- he was brain dead. I
2 shouldn't say because he didn't meet all the criteria, but
3 he was as close to being brain dead as you can be when he
4 first got here or got to the emergency room and he
5 deteriorated even a little bit more, the little bit --
6 little bit of things that he could do when -- than when he
7 first arrived.

8 Q Thank you. That's all.

9 THE COURT: Recross.

10 MS. WINGARD: Nothing.

11 THE COURT: Thank you, Doctor. Appreciate you
12 coming.

13 THE WITNESS: Thank you.

14 MR. RICHARDSON: Your Honor, may this witness be
15 excused from his subpoena?

16 THE COURT: Absolutely.

17 MR. JEPERTINGER: We need to take up a matter
18 outside the presence of the jury, Your Honor.

19 THE COURT: Jurors, please go to your jury room and
20 let me take up this matter.

21 (WHEREUPON, the jury was removed from the
22 courtroom at 11:50 a.m., and the following proceedings
23 commenced in open court.)

24 MR. JEPERTINGER: Your Honor, at this time, the
25 State would move to have Doctor Presnell -- I know there's

1 some question about autopsy photographs that the Defense
2 had problems with. We call Doctor Presnell to the stand
3 just to view which photos will be allowed or not allowed.
4 And Your Honor, my suggestion is I think if we could show
5 which photographs, and we'll prop it on to a CD, so
6 whatever the Court decides that she can show that on the
7 screen.

8 THE COURT: All right.

9 MR. JEPERTINGER: Doctor Presnell, if you could
10 come forward please.

11 DEPUTY CLERK OF COURT: If you will, ma'am, place
12 your left hand on the Bible, raise your right hand.

13 THE DEPUTY CLERK OF COURT: Please be seated.
14 State your full name for the record.

15 THE WITNESS: Susan Erin Presnell, P-R-E-S-N-E-L-L.

16 PROFFER EXAMINATION

17 BY MR. JEPERTINGER:

18 Q Doctor Presnell, you're a forensic pathologist in this
19 case, correct?

20 A Yes.

21 Q And part of the autopsy protocol there are photographs
22 taken at every autopsy; is that correct?

23 A Yes.

24 Q All right. And they were taken in this case involving

25 Child correct?

1 A Yes.

2 Q All right. You and I talked about this case; have we
3 not?

4 A Yes.

5 Q And do you feel that certain of these autopsy photos be
6 necessary to describe to the jury what injuries Child
7 suffered?

8 A I think that they're necessary to explain to
9 demonstrate the severity, certainly the ones on the back
10 and the legs and the pattern injury on the -- to actually
11 illustrate the breadth of the pattern injury on the torso.

12 Q So if you could show us which photos would be necessary
13 to do that once we get this up so we know which ones we --
14 are subject to the Court's ruling.

15 THE COURT: Yes, now Counsel, this time we're not
16 worrying about the jury. We're worrying about the doctor
17 and the judge seeing so turn that thing where I can see it
18 since I'm gonna have to make a ruling.

19 THE WITNESS: There's gonna be a lot of autopsy
20 photographs so go through them first, or we can go through
21 them all.

22 MR. JEPERTINGER: Judge, we're gonna have to
23 have -- we have --

24 THE COURT: How many autopsy photographs do we have
25 in issue?

1 MR. JEPERTINGER: Well, I'd say there are about 15
2 to 20 of them.

3 THE WITNESS: In total or ---

4 MR. RICHARDSON: I'm sorry, Doctor?

5 THE WITNESS: I guess I cut him off. If there's 15
6 or 20, we still haven't called them out, that's no problem
7 with---

8 MS. WINGARD: I think he called out ---

9 THE WITNESS: Okay.

10 MS. WINGARD: ---not all of the ones ---

11 THE COURT: All right. We're talking about 15 or
12 20 to take a look at.

13 BY MR. JEPERTINGER:

14 Q I'm gonna show her a series. If this would help you
15 'cause you were downstairs, we did these on a disk
16 already. Just tell me yes or no.

17 A Yes. Maybe.

18 Q Maybe. Okay, put them maybe over here.

19 A (Looking through photographs.) Let me see.

20 THE COURT: All right, I can't hear now. I don't
21 know who's having a private conversation, but folk, are
22 you letting me in on this matter or we just...

23 MR. JEPERTINGER: We had made some hard copies,
24 Your Honor, and this will-- may save the Court some time.

25 THE COURT: Okay, let me do this. Let me do this.

1 I'm gonna go take a short recess. Consult with the
2 Doctor, and then I want all this put on the record in a
3 formal setting, not in anybody just gathered around if you
4 follow me.

5 MR. JEPERTINGER: Yes, sir.

6 THE COURT: 'Cause I'm bound by some precedent that
7 first and foremost some of it I wrote so I understand it I
8 believe; but if not, I'll refer to my own writing. All
9 right, I'm gonna take a recess.

10 (WHEREUPON, a recess was taken from the
11 proceedings.)

12 THE COURT: All right.

13 MR. JEPERTINGER: Yes, sir.

14 BY MR. JEPERTINGER:

15 Q Doctor Presnell -- I'd like to have these three
16 photographs marked for identification at this time please.

17 THE COURT: 26, is that where we are?

18 THE COURT REPORTER: Yes, sir.

19 THE COURT: 26, 27, 28, 29.

20 MS. WINGARD: I don't object to 29.

21 THE COURT: 29, no objection, in evidence. Take
22 out the I.D., Ms. Court Reporter.

23 (WHEREUPON, State Exhibits Nos. 26 through 29 were
24 marked for identification and/admitted into evidence.)

25 ///

1 BY MR. JEPERTINGER:

2 Q I'm gonna show you State's Exhibits 26, 27, and 28. I
3 believe all three of these photos were taken at the
4 autopsy, correct?

5 A Yes.

6 Q Okay. Can you tell the Court why this would be
7 essential, these three photographs, would be essential in
8 your testimony to the jury in this case and explain your
9 findings.

10 A The Exhibit 26 is a picture of his torso and it
11 demonstrates the breadth of the injury as well as the
12 pattern of the injury consistent with the whipping type
13 mark but it shows how it extends over the body. The next
14 two pictures are the most severe areas of the beating and
15 the -- what we do is we cut down into the skin and the
16 underlying soft tissue to demonstrate how far down the
17 bleeding goes as far as to demonstrate the severity.
18 These two photographs illustrate all down his legs, the
19 bleeding is going down to the muscle. It's not just a
20 superficial bruise as well as the pulpifaction where the
21 muscle is actually coming apart from the surrounding
22 tissue. Again, I think as far as demonstrating severity
23 that would illustrate it more better than the diagram.

24 THE COURT: All right.

25 MR. JEPERTINGER: That's all the questions I have

1 in terms of this issue, Your Honor.

2 THE COURT: You may examine in the hearing here.
3 Proceed.

4 MS. WINGARD: Judge, I would just object to the
5 introduction of them. Well, I guess you don't know all I
6 know now so I'll ask.

7 BY MS. WINGARD:

8 Q Doctor Presnell, the beatings were a secondary finding
9 but they were not the cause of death; is that correct?

10 A No, they weren't the cause of death. The head injury
11 was the cause of death.

12 Q The head injury was the cause of death. And you have
13 explained very clearly and in great detail, as I recall
14 from reading a transcript of the waiver hearing, these
15 injuries.

16 A Yes.

17 Q So you don't feel like you could describe the injuries
18 and explain how the bleeding goes down into the various
19 levels without the pictures?

20 A Well, I can certainly explain it and just the pictures
21 illustrate it.

22 Q But you think that a juror could understand it without
23 the pictures?

24 A I'm sure they can understand.

25 MS. WINGARD: Judge, I object to those pictures.

1 They're highly prejudicial. Moreover I question the
2 relevancy because those bruises were not the cause of
3 death. The head injury was the cause of death so I would
4 object to Exhibits 27 and 28. And moreover, Doctor
5 Presnell said she can explain it without these pictures.

6 THE COURT: All right, Mr. Solicitor.

7 THE WITNESS: This just illustrates.

8 MR. JEPERTINGER: Just further query.

9 BY MR. JEPERTINGER:

10 Q Would you showing those photographs help the jury to
11 understand the relationship between the anatomical
12 findings and the injuries suffered?

13 A Well, let me back up. As far as the head injury being
14 separate, yes, the head injury is the cause of death; but
15 it's my opinion the head injury probably occurred at the
16 same time as the beating. And again, there's a lot of
17 medical manipulation to the head and this beating
18 illustrates again the severity of the beating overall
19 which would explain, you know, why that makes sense that
20 that head injury happened at that time. Again, I could
21 explain it and explain how the — how much extends through
22 underlying fatty tissue into the muscle. The picture is
23 more illustrative but I can certainly explain.

24 MR. JEPERTINGER: That would be it, Your Honor.

25 BY MS. WINGARD:

1 Q Doctor, let me ask you. As I recall your testimony.
2 you testified at the waiver hearing that the bruises could
3 have taken place on Thursday so...

4 A I think it's -- let's see, what day was Thursday?

5 MR. JEPERTINGER: 24th.

6 BY MS. WINGARD:

7 Q The 24th.

8 A Okay. Well, the whole beating could have happened on
9 Thursday. Well, as far as dating the injuries, you can't
10 narrow it down, can't give a specific this happened 24
11 hours ago or 42 hours ago. So instead, what you're doing
12 is applying your scenario or your findings at autopsy to
13 the proposed scenario. The scenario is that this beating
14 occurred on the 25th and that's consistent with that. In
15 isolation, without any other knowledge, could they have
16 happened hours before, you know, the day before, yes, they
17 could have. You can't actually look at a autopsy while
18 and say that it didn't. Again, however it certainly
19 supports the scenario of the 25th, the Friday.

20 Q But they're not necessarily happening at the same time?

21 A What doesn't happen at the same time?

22 Q I'm sorry, the bruises on the body do not necessarily
23 happen at the same time as the head injury?

24 A Well, we can't say that just from the anatomic
25 findings. I mean, it -- being that's most likely the time

1 that head injury occurred, but we can't differentiate that
2 just anatomically.

3 Q Okay, but let me understand. It was my understanding
4 from your testimony before that the bruises could have
5 taken place on Thursday. He went to the hospital late
6 Friday afternoon —

7 A Again, you're taking — you're looking out of context.
8 If I looked at a picture of a bruise and took a little
9 sample of it and was asked tell me — to tell you when
10 that occurred, I could say, well, it could have been
11 Friday, it could have been Thursday. It might have been
12 late Wednesday. So no, I can't say exactly when they
13 occurred. So you know, again, the — as far as the
14 proposed scenario what is the explanation for the
15 decedent's, you know, the boy's injuries, well,
16 explanation is injury or assault or beating on the 25th
17 and these are consistent with that doesn't mean that
18 beatings didn't occur hours before. I mean, it certainly
19 could have anatomically wise. Am I making this more
20 confusing?

21 Q No, I understand. It — the beating could have
22 happened earlier is what you're saying, but it also could
23 have happened at the same time as the head injury?

24 A True. I'm saying that I cannot tell you exactly when
25 the beating occurred. Did the beating and head injury

1 occur concurrently? Most likely yes.

2 Q But they could have occurred at different times?

3 A If you take it out of context and look at it that way,
4 yes, they could have. There's nothing to prove they
5 actually didn't occur simultaneously.

6 THE COURT: All right. Anything further?

7 MR. JEPERTINGER: I don't think so, Your Honor.

8 THE COURT: Order: The issue at Bar is the
9 admissibility of three autopsy photographs.

10 There has been a plethora of writing by the
11 appellate entities in South Carolina. Historically, the
12 leading case and probably the seminal case in South
13 Carolina concerning the admissibility of photographs is a
14 case emanating from the Charleston venue known as State
15 versus Kohrnaens and that's spelled K-O-H-R-N-A-E-N-S,
16 cite is omitted.

17 In State versus Martucci, M-A-R-T-U-C-C-I, a
18 homicide by child abuse case, the writer inculcates the
19 Bench and Bar. 'The State has the right to prove every
20 element of the crime charged and is not obligated to rely
21 upon a defendant's stipulation. State versus Johnson,
22 cite omitted. The relevance, materiality, and
23 admissibility of photographs are matters within the sound
24 discretion of the trial court and a ruling will be
25 disturbed only upon a showing of an abuse of discretion.

1 State versus Hazelton, cite omitted; State versus
2 Rosamond, cite omitted; State versus Kelley, cite omitted.
3 The trial judge must balance the prejudicial effect of
4 graphic photographs against their probative value. State
5 versus Vang, V-A-N-G, cite omitted. A trial judge's
6 decision regarding the comparative probative value and
7 prejudicial effect of relevant evidence should be reversed
8 only in exceptional circumstances. State versus Hamilton,
9 cite omitted. Admitting photographs which serve to
10 corroborate testimony is not an abuse of discretion.
11 Rosamond cited again. State versus Tucker, cite omitted;
12 State versus Jarrell, J-A-R-R-E-L-L, cite omitted.
13 However, photographs calculated to arouse the sympathy or
14 prejudice of the jury should be excluded if they are
15 irrelevant or not necessary to substantiate material facts
16 or conditions. State versus Brasnell, cite omitted. To
17 constitute unfair prejudice, the photographs must create a
18 tendency to suggest a decision on an improper basis,
19 commonly, though not necessarily, an emotional one. State
20 versus Kelley, cite omitted, and State versus Alexander,
21 cite omitted. A trial judge is not required to exclude
22 relevant evidence merely because it is unpleasant or
23 offensive, Davis versus Trailer, cite omitted.

24 Further, in regard to the facts of Martucci and the
25 testimony of the pathologist in this case, Doctor Ward,

1 the Court further elucidates, quote, in the present case,
2 the photographs were introduced to corroborate the
3 testimony of Doctor Ward, who testified regarding the
4 various injuries inflicted on the child, including the
5 discoloration of the bruises and the internal trauma which
6 caused his death. The photographs were relevant to prove
7 child was abused, that the abuse was the cause of his
8 death, and that the abuse manifested an extreme
9 indifference to human life, all of which support the
10 charge of homicide by child abuse. See code section
11 16-3-85(a)(1). And put a footnote there, Ms. Court
12 Reporter, that is the homicide by child abuse law in South
13 Carolina.

14 Furthermore, the photographs were necessary to
15 depict the severity of the bruises and the resulting
16 trauma, which was inconsistent with accidental injury or
17 play. The photographs were relevant and necessary, and
18 they were not introduced with the intent to inflame,
19 elicit sympathy of, or prejudice the jury. The trial
20 judge did not abuse his discretion in admitting the
21 photographs. See Jarrell, cite omitted. Upholding the
22 admission of graphic autopsy photographs in homicide by
23 child abuse case because they corroborated testimony and
24 demonstrated the extent of the injuries; see also State
25 versus Nichols, cite omitted. Admitting a photograph of

1 the victim's face because it demonstrated the angle and
2 distance from which the victim was shot; State versus
3 Nance, cite omitted. Holding, the trial court did not err
4 in admitting photographs during trial which, one,
5 corroborated testimony regarding the places in which the
6 victim was stabbed; two, corroborated testimony indicating
7 likelihood the victim died of the stab wounds; three, were
8 used to show malice and intent of the -- an element, not
9 intent, I made an error there, Ms. Court Reporter, and
10 forever will ask for excusal. An element of the crime
11 charged and four were later reviewed by the Supreme Court
12 and found not to be unduly prejudicial to the defendant.

13 State versus Holder is the homicide by child abuse
14 case. That case had its etiology in the trial venue of
15 Greenville, came to the Court of Appeals by way of
16 appellate review resulting in a writer at the Court of
17 Appeals writing concerning the autopsy photographs, but
18 thereafter made its way to the highest appellate venue,
19 the South Carolina Supreme Court. And there is writing
20 from the state Supreme Court by Justice Beatty who
21 received his training at the Court of Appeals. Quote,
22 Holder next argues the trial court committed reversible
23 error in admitting autopsy photographs especially those
24 showing Bo's, B-O-'S, internal injuries into evidence.

25 The relevancy, materiality, and admissibility of

1 photographs as evidence are matters left to the sound
2 discretion of the trial court. State versus Nance, cite
3 omitted. If the offered photograph serves to corroborate
4 testimony, it is not an abuse of discretion to admit it.

5 To constitute unfair prejudice, the photographs must
6 create an undue tendency to suggest a decision on an
7 improper basis commonly, though not necessary, an
8 emotional one. State versus Jackson is cited and State
9 versus Alexander is cited. And you can put footnote two.
10 Some of this cited material is duplicative and replicating
11 as juxtaposed to State versus Martucci. Continuing with
12 the cite from Holder, "In the current appeal, the
13 pathologist, Doctor Michael Eugene Ward, testified, in
14 camera, that the photographs would help him in
15 demonstrating the anatomic relationships and the
16 disruption of those anatomic relationships. There may be
17 some lack of knowledge of internal anatomy among the
18 jurors. Doctor Ward stated he could explain the injuries
19 to the jury without the photographs, but he was not sure
20 if he could explain it to their understanding. He also
21 noted that this would be the best way by not only
22 demonstrating the anatomic relationships but also showing
23 the injuries. During his testimony, Doctor Ward explained
24 that some of Bo's internal injuries showed signs of trying
25 to heal so they had been inflicted more than a day before

1 his death. Doctor Ward stated Bo also had external
2 bruising on his abdomen that was probably inflicted closer
3 to the time of his death, the pathologist also indicated
4 blunt trauma force was used and noted the extensive
5 bruising over the child's body. Doctor Ward used the
6 photographs to explain the evidence and the reasons for
7 his findings. We find the photographs clearly demonstrate
8 the extent and nature of the injuries in a way that would
9 not be easily understood based on the testimony alone.
10 The photographs corroborated the pathologist's testimony
11 about the extensive bruising on the child, which was in
12 various stages of healing and showed that even internal
13 organs manifest signs of bruising. This is particularly
14 helpful to the jurors who are unversed in medical
15 matters... "These photographs demonstrate that the damage
16 to the child would have been difficult to ignore.
17 Although the photographs were graphic, the facts in this
18 case were graphic, and there is no suggestion that their
19 admission had an undue tendency to suggest a decision on
20 an improper basis. We hold the trial court properly
21 exercised its discretion in admitting the autopsy
22 photographs in the case." Suffice it to say that I have
23 attempted to recite applicable precedence in regard to the
24 admissibility of autopsy photographs.

25 The role of the trial court is to decide

1 admissibility matters in regard to evidence and that is
2 inclusive of such matters as graphic autopsy photographs.
3 For purposes of this case I come to the ineluctable
4 conclusion that the photographs are in fact admissible and
5 do meet the test of Martucci, Holder, and Kohrnaens.
6 Thus, the jury will be presented with the photographs. I
7 have analyzed in my mind Rule 403 and State versus
8 Alexander as is mandated concerning the consideration of
9 the matters relating to this type of evidence. I conclude
10 that the balance test as mandated by the rule in Alexander
11 is met in this case. All rights are protected. All
12 rights are reserved for purposes of appellate review. And
13 it is so ordered.

14 Bring the jury out.

15 MS. WINGARD: Your Honor, so I don't have to object
16 again---

17 THE COURT: You do not have to object again. And I
18 specifically state for the record that is consistent with
19 the appellate rules and you do concur, don't you,
20 Mr. Solicitor?

21 MR. JEPERTINGER: Yes, sir.

22 THE COURT: All right. Bring the jury out and we
23 need to swear the doctor again.

24 So Doctor, go back around and...
25

SW - S. PRESNELL - DIRECT

1 (WHEREUPON, the jury was returned to the courtroom,
2 and the following proceedings commenced in open court.)

3 THE COURT: Jurors, please understand that at times
4 I'm required under the rules to do certain things in
5 regard to matters that relate to the law and I must do
6 some of those matters in your absence. I've done that in
7 this case. I've been working on the matters though we
8 haven't been taking any kind of break, that is, going to
9 impinge upon your time and talent I just ask you to
10 understand that we follow the rules as we proceed.

11 Call your next witness.

12 MR. JEPERTINGER: We call Doctor Susan Erin
13 Presnell.

14 THE COURT: Swear her, Ms. Clerk.

15 THE CLERK OF COURT: If you will, ma'am, place your
16 left hand on the Bible, raise your right hand.

17 WHEREUPON,

18 SUSAN ERIN PRESNELL,
19 having been duly sworn by the Deputy Clerk of Court,
20 testified as follows:

21 THE DEPUTY CLERK OF COURT: Please be seated.
22 State your full name for the record.

23 THE WITNESS: My name is Susan Erin Presnell.

24 DIRECT EXAMINATION

25 BY MR. JEPERTINGER:

SW - S. PRESNELL - DIRECT

1 Q Doctor Presnell, where do you work?

2 A I work forensic pathologist at MUSC at the Medical
3 University of South Carolina down the road in Charleston.

4 Q All right. And what is a forensic pathologist please?

5 A Forensic pathology is a subspecialty of the broad field
6 of pathology. Pathology is the study of disease. Most
7 pathologists will examine tissues or samples from patients
8 that clinicians may harvest, like for example a skin
9 biopsy or a pap smear or a breast biopsy, or something
10 like that, any kind of tissue that's taken off of a
11 patient is sent to the pathologist —

12 THE COURT: Doctor. Doctor.

13 THE WITNESS: I'm talking too fast; aren't I?

14 THE COURT REPORTER: Yes, ma'am.

15 THE COURT: She's got to take down every word you
16 say, and you're proceeding with some degree of alacrity
17 and speed. Slow, slow it down please.

18 THE WITNESS: I apologize.

19 THE COURT: All right.

20 THE WITNESS: If someone takes a biopsy, let's say
21 a skin biopsy, that goes to the pathologist and they
22 examine it, look under the microscope and diagnose so
23 whether it's a, for example, skin cancer or not or maybe
24 it's a infection or not. And that's what a general
25 pathologist does. Forensic pathology is the subspecialty

SW - S. PRESNELL - DIRECT

1 of that so you've gone through general pathology training
2 and then you subspecialize in forensics where you're not
3 just looking at portions of a patient; you're looking at a
4 whole patient, a decedent, not someone that's passed on.
5 You are looking for diseases, but you're also looking for
6 traumas, interpreting these traumas, documenting those.
7 Ultimately the process of course occurs through what we
8 call an autopsy so a complete autopsy where we look
9 externally and internally, and ultimately we'll put all
10 these findings together to come up with a cause and manner
11 of death. And that is what I do, the forensic pathology
12 subspecialty.

13 Q Okay. Now could you tell us a little bit about your
14 educational background please?

15 A Well, pathologists are M.D.s; they're doctors, or some
16 are G.O.s. But they're physicians. So that requires
17 college. So I had my biology degree from Clemson and went
18 to MUSC for four years in medical school. After four
19 years of medical school that's when you -- that's when you
20 become an M.D. and you have to choose your specialty like
21 surgery, pediatrics. I chose pathology. That's a five
22 year training program at that time, and that was the
23 general pathology. And then an additional year in the
24 substantial specialty or forensics.

25 Q Are you --

SW - S. PRESNELL - DIRECT

1 A I'm -- and then I -- after the training you have to
2 become Board certified so I'm Board certified in the
3 general pathology and then forensic pathology.

4 Q Okay. Have you ever been qualified as an expert in the
5 field of forensic pathology in courts?

6 A Yes.

7 Q Okay. About how many times have you been qualified an
8 expert in court?

9 A I'm just estimating but probably around 75 or 80.

10 Q Okay. And in terms of autopsies since you've been
11 doing them, how many have you done approximately?

12 A Again, estimation around 2,000.

13 MR. JEPERTINGER: At this time, Your Honor, I would
14 like to have Doctor Presnell qualified in the field of
15 forensic pathology to offer opinion testimony in that
16 regard.

17 THE COURT: You're entitled to voir dire before I
18 rule. Do you desire to do that?

19 MS. WINGARD: No, sir, no objection.

20 THE COURT: She's qualified as a forensic
21 pathologist. And you may posit query that will elicit
22 opinion testimony.

23 MR. JEPERTINGER: Yes, sir.

24 BY MR. JEPERTINGER:

25 Q Doctor Presnell, how did you get to be involved in this

SW - S. PRESNELL - DIRECT

1 case please?

2 A South Carolina is a coroner state so the coroner
3 responded to this death or announcement of brain death and
4 arranged to have the decedent who is Child
5 transported down to Charleston for autopsy at our facility
6 at MUSC.

7 Q You know what date that was he was transported down to
8 y'all?

9 A On July 27th.

10 Q All right. And what is your normal protocol upon
11 receipt of Child's body please?

12 A Well, all of our autopsies are complete autopsies and
13 we start out with a --well, we do diagrams. We also do
14 photographs so ex-- we start off with the external
15 examination. We document all the injuries, any scars, any
16 kind of, you know, that might be unusual. Then after that
17 we would proceed to do internal examination where we look
18 at all the internal organs so this would include the brain
19 as well. In addition to just looking at them grossly and
20 doing a dissection, we also take samples of those tissues
21 to look at them under microscope at a later date when they
22 come back from the histology lab to aid in the
23 interpretation of the findings. So we did that in this
24 case and use the findings again to come up with a final
25 autopsy report.

SW - S. PRESNELL - DIRECT

1 Q Do you also rely on any toxicological reports to aid
2 you in your findings?

3 A We typically take blood and urine, if they have it, at
4 the time of autopsy to run for toxicology. We took --
5 we'll send it either to SLED or at some point we use the
6 term laboratory. They'll test it for drugs and alcohol.
7 Now in cases where the person's been hospitalized for a
8 while, they actually would prefer to use maybe blood that
9 the hospital obtained because it more -- it would reflect
10 more what was in the person's system at the time of the
11 incident. So I say somebody is in a car accident and
12 survives for two days, before he passes on they would want
13 to know what his blood alcohol was at the time he was
14 taken to hospital, not two days later at the time of
15 autopsy. In this case we had received some blood that
16 they found at the hospital before at -- not our hospital
17 but in Florence before, before he passed, and so that was
18 done in this case.

19 Q And subsequently you would have mailed that to SLED you
20 say?

21 A Well, what we do, there's a courier service and we
22 package it up, and there's a pickup place that we sign the
23 SLED toxicology, SLED toxicology box. We sign it over to
24 this SLED or the pickup place at MUSC, and then the SLED
25 courier comes by and picks that up and transports it to

SW - S. PRESNELL - DIRECT

1 SLED.

2 Q Okay, thank you very much. Now on the external
3 examination of Child can you tell the jury what you
4 found.

5 A Well, Child has pretty extensive injuries. What I
6 can do is just kind of summarize real briefly with words
7 and then ask if I might use the diagram to illustrate his
8 injuries.

9 Q Absolutely. Go ahead.

10 A Well, first and foremost, he has massive head injury,
11 and this is ultimately his cause of death. Understand
12 too, that he's been through medical intervention, of
13 course, because they found him he was still breathing and
14 they tried to do medical intervention to, you know, try to
15 save him. One of the things that they did was do a
16 craniotomy where they taking a piece of skull, open it up
17 to try to relieve the pressure in his brain. By doing
18 that, the medical intervention itself induces some
19 changes. So he does have like this hemorrhage in the
20 scalp in the right sided area, but they're also medical
21 intervention there so, again, it complicates what that
22 interpretation is.

23 That means that he does have a - let me back up on
24 just some terminology which is usually pretty common sense
25 but we'll just go through it pretty quick. When we call

SW - S. PRESNELL - DIRECT

1 something an abrasion, that's a scratch so that's where
2 the skin is rubbed off. We call something a contusion,
3 that's a bruise, something from blood trauma that's struck
4 the skin and caused bleeding underneath. Laceration,
5 which he doesn't have, would be another blunt force
6 injury. So on him, on his head he has on the left side he
7 does have and the left side of the scalp he does have
8 hemorrhages consistent with a contusion. He also is, like
9 I said, is diffusely over the entire right side of the
10 scalp.

11 Q The word "diffusely," if you could explain that for the
12 jury.

13 A Means that it's confluent. It's -- there's no -- kind
14 of like patchy.

15 Q Excuse me, confluent doesn't help either. Do you have
16 --we'll have to pull out the Webster's dictionary here.

17 A It's all over.

18 Q That's good.

19 A It's not splotchy. It's all over. And then when we
20 examine --

21 THE COURT: For the record, we would note that
22 she'd have to explain that in Charleston too.

23 MR. JEPERTINGER: Thank you.

24 THE WITNESS: So when we did examine the head, and
25 I'm just kind of -- what I'm doing is trying go through

SW - S. PRESNELL - DIRECT

1 the steps of the autopsy in my mind. Although the head is
2 last in my autopsy we'll start with that. When we examine
3 then the head is get into the brain we reflect the skull,
4 the scalp forward. We make an incision from behind one
5 ear to behind the other and then the scalp is reflected
6 forward so we can see the whole underlying scalp and the
7 whole skull area. The craniotomy was just the defect -
8 the defect that surgeons made on purpose to try to release
9 some pressure in the brain. It's on the right side. And
10 exuding from that is brain. The brain is so swollen that
11 it's starting to come out the skull area. And this is
12 just to reduce traumatic injury to the brain and the
13 resulting edema that it develops. We take this skull cap
14 off; you remove the skull cap. And he has a subdural
15 hemorrhage and just - you may have already heard it
16 before but the coverage of the brain. You have your
17 brain. It's covered by this kind of leathery membrane
18 called the dura and then outside of that is the skull. So
19 you have, kind of have double protection there. But he
20 has a subdural blood, which is blood between that leathery
21 dura and the brain itself so a subdural blood on the
22 right. Remember too, he had a craniotomy so I don't have
23 it documented how much was removed at the time surgical
24 intervention where they opened up the craniotomy so some
25 more may have been removed, but he had approximately 20ccs

SW - S. PRESNELL - DIRECT

1 which is maybe a half a cup over the right side of the
2 brain. Also had subdural hemorrhage under the bottom of
3 the brain. The brain is, like I said, markedly swollen
4 and starting to fragment just from the natural swollen.
5 It's really difficult to assess, you know, there's any
6 distinct bruises on the side of the brain.

7 Let's see. I'll go jump ahead and go ahead to
8 looking at the injuries on the head microscopically. We
9 took samples of the cerebrum, the brain, and also of the
10 blood, the hem-- the subdural hematoma. We looked at it
11 under the microscope and the -- we actually did see the
12 focal bruising on the right side of the brain where it was
13 really starting to degenerate in the area of the
14 craniotomy. And so those sections too had acute
15 inflammation.

16 Now there's different types of inflammation. And
17 when you first have injury, acute inflammation are
18 inflammatory subs that respond first. At my house we call
19 them the army men to my three and five year old. But
20 they're the army men that are the acute inflammatory
21 cells. They'll come in to try to fix things first. They
22 usually show up in about six to twenty-four hours in
23 general. With different individuals can vary. But in
24 general these acute or inflammatory cells will usually
25 show up within six to twenty-four hours and that will be

SW - S. PRESNELL - DIRECT

1 the predominant in inflammation. After twenty-four hours
2 then the chronic inflammatory cells come in and start
3 patching things up. They're the navy. So we have army
4 come in first, then the navy. This is how I explain it to
5 my kids. But then so the cardio-inflammatory cells come
6 in and they predominant around, you know, forty-eight hour
7 period. So you have this progression of inflammation.

8 In his case his -- the bleeding that he had in his
9 brain had acute inflammatory cells with no significant
10 chronic inflammatory cell infiltrate. You know, again,
11 interpreting context because it -- the numbers are
12 generalities. We also looked at the subdural hematoma
13 which we didn't really have any responses at that point
14 which might suggest that he continued bleeding later on,
15 maybe after the evacuation. But that was -- that was what
16 was mainly for the head. Some minor injuries to the head.
17 We had three abrasions, three scratches over the forehead,
18 a scratch over the left cheek. And we have a number of
19 injuries to the mouth. There's scratches on the lips.
20 There's also bruising on the inside of the lips and what
21 the frenulum, that little piece of skin that attaches your
22 lip to your gums. Some of those injuries can probably be
23 explained by the endotracheal tube from the medical
24 intervention. Probably not all of them though 'cause
25 there was, you know, a number of them. So that's the head

SW - S. PRESNELL - DIRECT

1 and on his leg, again, his fatal injury.

2 Significant too he had numerous bruises over the
3 breast of his body basically. He has a lot of pattern
4 type injury. He has bruises that extends deep into soft
5 tissues and this is where I'd like to take a chance to use
6 the diagram to illustrate those.

7 BY MR. JEPERTINGER:

8 Q And you may come off the stand and here's the diagram.
9 Let me just get the number for that. I think this is
10 State's Exhibit 29.

11 THE COURT: 29.

12 BY MR. JEPERTINGER:

13 Q And what we're gonna have you do is if you could stand
14 on this side and we'll get up as close we can to the jury
15 and speak as loud as you can, Doctor Presnell.

16 THE COURT: Doctor Presnell, you got to keep your
17 voice up and you got to slow down a little bit because the
18 court reporter is running this machine hot.

19 BY MR. JEPERTINGER:

20 Q I'm gonna --we're gonna have you go the other way.

21 A So I can do it twice or?

22 THE COURT: Yes.

23 BY MR. JEPERTINGER:

24 Q Yes, that will be fine.

25 A All right. So this is a diagram of the -- I had done

SW - S. PRESNELL - DIRECT

1 at the time of autopsy. Actually this is a xeroxed copy
2 of it, and I went ahead and colored in the areas of
3 bruising. As you can see he has this one large complex.
4 This was what was first noticeable to me when I looked at
5 him. He has this linear, these linear marks that go
6 across from the left, kind of lower chest abdomen area up
7 to his arm area. We have multiple lines that that's a
8 pattern type injury. It's consistent with a whip type
9 injury where it doesn't have to be a whip, but anything
10 like long and narrow would create this kind of pattern.
11 And we have additional contusions or bruises on the
12 middle, mid chest, under the -- right under the nipple
13 area on the left chest, on the left upper arm here which
14 also shows a little bit of pattern. There's a little
15 central area that's blanched.

16 Q What does that mean, blanched?

17 A Clear. There's a little clear area in the middle.

18 Q And what form is that clear area did he have? Was
19 there any particular shape, rectangle, circle?

20 A No, no. It's a -- remember too that this child is
21 pretty darkly pigmented so it's, you know, looking at the
22 surface of the skin and the pattern sometimes it's really
23 difficult to see distinctly. A lot of times it kind of
24 blends in to the nearby skin. He has hemorrhages when
25 they're reflected the skin on his hip. He has bruising

SW - S. PRESNELL - DIRECT

1 down under his hip. He has three bruises on the right
2 thigh and this complex bruises on the left thigh. Some of
3 them are patterned. This little one that looks kind of
4 like an upside down Y, got some angulation to it, again,
5 suggestive of maybe something long and narrow.

6 Looking on the back we see on the backs of the arms
7 there are several bruises but most of them are on the back
8 of the buttocks and the legs. Here we see left buttock,
9 left thigh, and the left lower leg. And here on the right
10 side this -- this is a 14-inch overall contusion. These
11 little red marks here are abrasions or scratches. One of
12 the things that we do when we're looking, remember I
13 mentioned that the skin was pretty darkly pigmented. We
14 do this to try to find out as much information as
15 possible, but we do cut down into this area and we look
16 underneath the skin to see how much blood there is or to
17 see if there's any blood that we couldn't see on the
18 surface and meaning some contusion we just couldn't see on
19 the surface. And when we do that we see that the skin or
20 the blood under -- in his thigh and his buttock area, that
21 the blood extends not just superficially but through the
22 skin, through the fatty tissue, and all the way down to
23 muscle, so this is a pretty deep, deep bruise. Not only
24 that but on the back of this right leg here the -- he has
25 an avulsion injury and avulsion means where the tissues

S W -SPRESNELL- DIRECT

1 are actually coming apart. The muscle is avulse from the
2 overlying soft tissue so they're starting to separate.

3 We -- I can talk about microscopic when I get back
4 up on the stand to go over what we looked at.

5 Q If you could show it for the jury here.

6 A Okay, all right. So here is the diagram that we did at
7 the time of autopsy. Again, I started off with this
8 overall pattern that extends from the left lower chest,
9 abdomen, all the way across on to the arm area. It has
10 that linear type pattern that suggests a whip mark. He
11 has additional bruises in the middle chest, left chest by
12 the nipple, left side chest, over the hip, three on the
13 leg -- excuse me, the right thigh, right front of the
14 thigh, and then this complex on the left thigh. Again,
15 this bottom one has a kind of a pattern with an angulation
16 to it suggestive of again a long narrow object. You can
17 see on the arm, the right arm, and the left arm we have
18 several more bruises. This one right here on the left
19 upper arm is the one that had the little central blanching
20 or clearing, those rounded area. On the backs of the arms
21 there's several bruises. Again, more significantly, the
22 most of the hemorrhage and deep soft tissue hemorrhage is
23 on the buttocks and thigh area. The left buttock has
24 hemorrhage, the left thigh, left lower leg, the 14 inch
25 complex over the right buttock and right thigh, the back

SW-S. PRESNELL - DIRECT

1 of it.

2 This is where we cut down into the soft tissues to
3 try to see how far down the blood went and how severe the
4 trauma was. And when we saw that there was a bulging
5 injury where the muscle is actually separating from the
6 overlying soft tissue.

7 Q All right.

8 A (Witness resumes her seat.) Now if I can continue —

9 Q Yes, ma'am.

10 A —like I did with the head. We did take microscopic
11 section —

12 THE COURT: Little slower, a little slower.

13 THE WITNESS: We did take microscopic sections of
14 various organs as well as a couple of cutaneous injuries,
15 the bruises. I will mention that in the lungs the lungs
16 showed what we call pulmonary fat emboli.

17 BY MR. JEPERTINGER:

18 Q What does that mean?

19 A I'm getting excited. So this — okay, so what happens
20 is when there's a beating and/or, excuse me, when there's
21 blunt trauma and it may even happen what you see in car
22 accidents too. And there's damage to the underlying soft
23 tissue. The underlying soft tissue is made up of
24 connected tissue some of which is, it's fat or adipous
25 tissue. And that's pulverized. It can — little fat

SW - S. PRESNELL - DIRECT

1 droplet can actually get into the blood system and then
2 travel back, go to the right side of the heart and are
3 pumped out to the lungs where they get stuck in the little
4 itty bitty vessels called capillaries. And so we can see
5 under the microscope these little fat, these little fat
6 droplets stuck in the vessels of the lung. You get an
7 just a sign that's consistent with a blood trauma to
8 significant soft tissue trauma. The other thing we did
9 was take some sections of some of the bruises. We didn't
10 sample all of them but we did do several. And they showed
11 a early acute inflammation. Remember we talked about
12 acute usually predominating for the first 24 hours and
13 then slowly being replaced by the chronic inflammatory
14 cells. They're still at the acute phase of inflammation.

15 So those were Child s injuries, and again, we
16 summarized it. We put it down in the autopsy report and
17 ultimately called his cause of death as the blunt trauma
18 to the head and that the manner of death was homicide.

19 Q Okay. Now let me ask you, we have three different
20 photographs. Would these State's Exhibit 26, 27, 28
21 further explain what you're talking about in terms of the
22 avulsion?

23 A Well, one of them will demonstrate the overall pattern
24 injury on the chest and abdomen area. And the other is
25 the cut down, the - what demonstrates the severity of the

SW - S. PRESNELL - DIRECT

1 bleeding and the bruising.

2 Q Okay. May I have her step down from the stand again
3 please.

4 **THE COURT:** Yes. Once again, the caveat, Doctor,
5 is slow and loud.

6 **BY MR. JEPERTINGER:**

7 Q Okay. This is State's Exhibit 26 I'm showing you
8 first.

9 A State's Exhibit 26 is a picture of the torso of
10 Child I don't--you might be getting a little bit of
11 a glare. Maybe they can hold it themselves later. But
12 what this is illustrating are these linear patterns on the
13 abdomen/chest area, extends all the way up on to the -- to
14 the arm. You can see some of a little bit of the other
15 bruises too, but it's difficult. You can see the skin is
16 dark. Again, just illustrating the pattern, the linear
17 pattern stemming from down here all the way up here to
18 just of a whip type injury or something that's hit being
19 struck with something long and narrow.

20 Q Okay, thank you. Next one please, and refer to which
21 one you're gonna show us by calling the State, the exhibit
22 number please.

23 A This is State's Exhibit 28. And before I show it to
24 you, you know, it is graphic, but what we do is -- and
25 this is something we again to determine to try to find

SW - S. PRESNELL - DIRECT

1 out, you know, what is going on. But we cut down, we cut
2 into the tissues to see what's underneath. So you're
3 going to see a picture of his buttocks and the tops of his
4 thighs. All right. So here's his buttocks. And what
5 you're looking at here, this right here is the lower -
6 the left lower leg. You see that yellow tissue there;
7 that's fatty tissue. All right. You see how yellow it
8 is. It has no hemorrhage in it so there's no bruise in
9 that area. That cut is made by us. There's no bleeding
10 because his heart is not pumping anymore. However, you
11 can see up on the buttock area here and the buttock here
12 and down into the thigh here. That is all hemorrhagic,
13 just confluent, diffuse hemorrhage extending all the way
14 down there and you can see that not only is it, like -
15 well, on the thigh over on the left side you can see some
16 hemorrhage right underneath the skin. That's a more
17 superficial bruise. This hemorrhage goes all the way down
18 to that red stuff right there which is muscle. See the
19 muscle over on this side? There's muscle right there and
20 the hemorrhage is extending all the way through that.
21 Just looking at a little bit lower --

22 THE COURT: And that number is?

23 THE WITNESS: Is State's Exhibit 27. And we're
24 looking at, again, the back of the right leg with the -
25 this is the knee area. About right here is the knee area.

SW-S. PRESNELL - DIRECT

1 Again, demonstrating that the tissue was all the way down
2 to this muscle and is actually separated from that muscle.

3 MR. JEPERTINGER: Thank you.

4 THE WITNESS: Again, we're looking at his buttocks.

5 THE COURT: And that number you start with 28?

6 THE WITNESS: State's Exhibit 28.

7 THE COURT: Yes.

8 THE WITNESS: We're looking at his buttocks and the
9 backs of his thighs. Like I was illustrating, the yellow
10 cut or the cut down here on the lower leg shows just
11 yellow fatty tissue so this is no bruising, no trauma
12 here. This is what a normal, normal fatty tissue looks
13 like. But if you look up higher you can see blood
14 underlying the skin in these areas. These areas right
15 here might would be considered more superficial bruise,
16 but if you look on the other leg here you see that that
17 hemorrhage extends all the way to that red muscle right
18 there so that the hemorrhage is all the way down to that
19 muscle. And then taking that pic— looking at State
20 Exhibit 27 down, further down his right leg, that's —
21 this is the back of the knee area. It shows that, again,
22 that the hemorrhage extends down to his muscle and that
23 the muscles actually separating from the overlying fiber
24 fatty tissue.

25 Q Now let me...

SW - S. PRESNELL - DIRECT

- 1 A (Resumes her seat.)
- 2 Q Now let me -- the injuries, you called these injuries
- 3 that he suffered to the legs and to acute, correct? Use
- 4 them as army illustration as you do with your children,
- 5 right?
- 6 A Yes, yes.
- 7 Q Okay. And you said that they could last anywhere from
- 8 between six to twenty-four hours generally?
- 9 A No, I said they predominant. The --
- 10 Q Predominate.
- 11 A --acute inflammatory cells predominate. That doesn't
- 12 mean that they're not there later. You know, they could
- 13 have downward slope. There's definitely a crossover
- 14 between the pique of the acute inflammation and the pique
- 15 of chronic inflammation.
- 16 Q Did you see any chronic inflammation?
- 17 A Well, there's kind of always little bits of chronic
- 18 inflammation around; but there's no evidence that
- 19 organization, no chronic inflammatory cells coming in yet
- 20 to respond to the injury.
- 21 Q Okay. So these injuries that we're talking about, the
- 22 linear abrasions and that you saw on the legs, when with
- 23 the 6/24 hour period begin for you? And if you know.
- 24 A You're trying to pin down and I--
- 25 Q I know. That's what lawyers do, I'm sorry.

SW - S. PRESNELL - DIRECT

1 A And in generalities it's -- the acute inflammation
2 cells predominate over the 24 hour period. So you could
3 suppose and hypothesize that injury happened, you know,
4 about twenty-four hours and certainly that could be the
5 case. These are generalities, though, and you know it
6 could have been between eight hours ago. It could have.
7 It does -- it...

8 Q Well, let's look at it this way. If it -- you do the
9 examination on a Sunday, correct?

10 A Yes, well and---

11 Q Which would have been the 27th?

12 A When he died that was -- he died on the 26th.

13 Q That's correct.

14 A So the processes in his body will have stopped at that
15 point.

16 Q So twenty-four hours from the 26th would be the 25th,
17 correct?

18 A Yes.

19 Q Okay. Could it extend to the 24th possibly?

20 A Possibly could have.

21 Q But based on the history that you received in terms of
22 this case, correct?

23 A Yes, I received a scenario that the incident---

24 MS. WINGARD: Objection.

25 MR. JEPERTINGER: Okay, that's fine.

SW - S. PRESNELL - DIRECT

1 **THE COURT:** Rephrase the query.

2 **BY MR. JEPERTINGER:**

3 **Q** But based on – you spoke with law enforcement,
4 correct?

5 **A** Yes.

6 **Q** Okay. And based on that these injuries are consistent
7 with something happening on the 25th?

8 **A** Yes, on the 25th.

9 **Q** Okay. In terms of the brain injury suffered by this
10 individual at – what would be the symptoms of someone
11 who's suffered this type of brain injury upon receiving
12 that injury?

13 **A** Well---

14 **Q** What could they do?

15 **A** Well, he has massive, massive head injuries so I would
16 suspect that he would be unconscious relatively early,
17 maybe soon after, maybe during the – even there might be
18 nausea, vomiting, lethargy, things like that, but
19 certainly unconsciousness would follow soon.

20 **Q** Okay. So there would be no – there would be no
21 playing video games, no watching television, no getting up
22 and eating, no running around as typical five year olds?

23 **A** That's – you would not expect that, no.

24 **Q** Now let me ask you, there was some question about a
25 goose egg on the forehead. Did that contribute in any

SW - S. PRESNELL - DIRECT

1 way, shape, or form to the brain injury suffered by this
2 child?

3 A Well, the story we were given is that he -- or
4 possibility is that he had bumped his head on the bunk
5 bed. We didn't see any injury to the front of his
6 forehead, and certainly that's not consistent. You could
7 get -- you could even get fatal injury from a short fall
8 type thing, but his injuries are more consistent with the
9 beating, the severe beating than bumping his head on the
10 bunk bed. Again, we didn't even see anatomic evidence
11 that he had injury on his forehead.

12 Q I think based on your autopsy report that you noticed
13 there are little inflammation of bronchial tubes,
14 bronchiolitis of some sort?

15 A Yes. It appears as though he probably had a cold, a
16 viral illness, viral infection.

17 Q Okay. So, and how long does that, if you have any idea
18 how long does that last?

19 A Well, my colds last a week or ten days.

20 Q Okay, very good. So do mine. In terms of the avulsion
21 and the injuries, would it be painful for the child to
22 sit?

23 A Yes.

24 Q Okay. And run around?

25 A Yes.

SW - E. PRESNELL - CROSS

1 Q Okay. I think that's all the questions I have. And
2 one more, just one final question. Within a reasonable
3 degree of forensic pathological certainty what did this
4 child die from?

5 A From blunt trauma to the head due to a beating.

6 Q Thank you so much. Please answer any questions Defense
7 may have.

8 THE COURT: Cross exam.

9 **CROSS-EXAMINATION**

10 BYMS. WINGARD:

11 Q Doctor Presnell, what size child was Child ?

12 A Let's see, he was 45.75 inches and he weighed 50
13 pounds.

14 Q And he was five years old; is that correct?

15 A Yes, ma'am.

16 Q Do you recall previously stating that the bruises could
17 have taken place on Thursday?

18 A Again, this goes back to trying to date an injury.
19 Certainly the bruises could have --with the inflammation
20 and having acute inflammation, although it's likely they
21 happened the day before, they may have actually been 28 to
22 35, you know. I'm not gonna put a number on it, but yes,
23 they could happened earlier.

24 Q Do -- let me show you this, see if you recall.

25 Page 153. I would ask you to read starting with the

SW - E. PRESNELL - CROSS

1 question on line 16.

2 MR. JEPERTINGER: Which page, ma'am?

3 MS. WINGARD: 153, line 16.

4 MR. JEPERTINGER: Thank you.

5 THE WITNESS: Out loud?

6 BY MS. WINGARD:

7 Q Yes, please.

8 A Oh, okay. Question, or Q: Okay. So it could have
9 been, say, he was taken off life support the afternoon,
10 Saturday afternoon, Saturday evening, these bruises could
11 have taken place Thursday then. That's within 48 hour
12 period we talked about. Yes, perhaps they could have.
13 Yes.

14 Q And your -- and the, "Yes, perhaps, we could have,"
15 that was your answer; is that correct?

16 A Yes, I'm sorry. Answer: Yes, perhaps it could have.

17 Q And Doctor, when we talk about the timeline on the head
18 injury, do you recall saying that it could have happened
19 from the afternoon of July 25th on? Do you recall that?

20 A Well, the injury could have happened from the 25th on.
21 Is that what you're asking me?

22 Q So it could have happened as late as the night of the
23 24th. Do you recall that?

24 A Yes. Again, it just comes down to trying to pinpoint
25 it just from anatomic findings. And so we're, you know,

SW - E. PRESNELL - CROSS

1 you just can't do that. Again, we see the recent not --

2 Q Doctor, if you'd just answer my question. I don't mean
3 to interrupt you, but do you recall saying that it sounds
4 reasonable that it could have happened in the early
5 evening of the 24th?

6 A I don't recall those exact words, but I'm sure I
7 probably said something to that effect because that's what
8 I would say now.

9 Q Okay. So it's still your testimony that it could --
10 that the head injuries now -- we're talking about the head
11 injuries; we were talking about the bruises before. But
12 the head injuries could have happened as early as the
13 early evening of the 24th, the afternoon, early evening of
14 the 24th?

15 A Yes, it could have happened Thursday evening.

16 Q Do you also recall saying that while it was unlikely
17 that these injuries occurred from a single impact from
18 falling off a bunk bed, it was unlikely, but you did not
19 say it was impossible, is that --

20 A Well, again, you can sustain fatal injuries and from
21 short falls. There are cases of there's -- those types of
22 fatalities. But in this case with the extent and the
23 multiple bruising on even on the scalp and brain that it
24 was unlikely from the single fall.

25 Q It's unlikely but not impossible.

SW - S. PRESNELL - REDIRECT

1 A Not impossible.

2 Q And then, also, do you recall that the brain injury and
3 the bruises did not all necessarily occur at the same
4 time?

5 A There could have been a difference of when it actually
6 occurred. Again, anatomically looking at it, you know,
7 you just can't pinpoint it so if the head injury happens,
8 you know, six hours before the other extensive bruising,
9 yes, perhaps it could have, looking again, just looking at
10 it anatomically.

11 Q And the bruises that you showed on the diagram, were
12 they of different ages or would you say they're all the
13 same ages?

14 A These are all the same ages. This is not a chronically
15 abused child with differing injuries or different ages for
16 the injuries. These are all at the same time.

17 Q Indulge me.

18 MS. WINGARD: That's all the questions we have of
19 this witness.

20 THE COURT: Redirect.

21 **REDIRECT EXAMINATION**

22 BY MR. JEPERTINGER:

23 Q I know you asked - answered the question that
24 anatomically based that these - this head injury could
25 have happened on the evening of the 24th, correct?

SW - S. PRESNELL - REDIRECT

1 A Right

2 Q Now with this severe brain injury that this child
3 suffers, questions I asked you about what his
4 functionality would be, whether he could get up the next
5 morning, watch television, run around the mobile home or
6 with---

7 UNIDENTIFIED PERSON: You got to be kidding me,
8 right?

9 BY MR. JEPERTINGER:

10 Q ---his brother?

11 MR. JEPERTINGER: Excuse me, Judge.

12 (Unidentified person escorted out the courtroom.)

13 THE COURT: Go ahead.

14 MR. JEPERTINGER: Thank you.

15 BY MR. JEPERTINGER:

16 Q The general functionality of the child to get up, eat,
17 run around, play.

18 A That wouldn't be expected with the extent of his head
19 injury.

20 Q So if he --

21 MS. WINGARD: Judge, I object. I don't believe
22 this was taken up in cross. Also it's been asked and
23 answered.

24 THE COURT: I would overrule all of those. This
25 is, I think, within the parameter of redirect because of

1 the medical causation queries that have been posed and I
2 will allow it. Proceed.

3 MR. JEPERTINGER: Okay. That's all I have. Thank
4 you so much and...

5 THE COURT: All right, recross.

6 MS. WINGARD: I have nothing further.

7 THE COURT: Doctor, thank you for coming. Have a
8 good trip back to Charleston.

9 THE WITNESS: Am I excused?

10 THE COURT: Yes, ma'am.

11 Next witness please.

12 MR. JEPERTINGER: Your Honor, the State rests.

13 THE COURT: The State rests. Two things: One,
14 it's lunch time but then I have to take up matters of law
15 so I will excuse the jury. Everybody else stays. 2:30.
16 Be back 2:30 everyone. Catch them the elevator.

17 (WHEREUPON, the jury was removed from the
18 courtroom at 1:11 p.m., and the following proceedings
19 commenced in open court.)

20 THE COURT: Motions by Defense.

21 MS. WINGARD: Mr. Bell is my law man. He's going
22 to be doing this.

23 THE COURT: All right.

24 MR. BELL: Unfortunately he could have done better
25 though. Of course, Your Honor, we'd move for a directed

1 verdict based on the insufficiency of the evidence at this
2 time. They certainly have not produced anything that
3 directly associates this gentleman with any incident that
4 caused this child's death other than some smarten of
5 testimony from the child that the child admittedly has
6 been all over the place and said that nothing happened all
7 the way up to the final version was very much led.
8 Certainly we feel there's a, certainly a derth of evidence
9 indicating -- lots of evidence indicating the child died
10 and how the child died but very little or nothing
11 indicating that this gentleman is linked to that. So
12 based on that ground we would move for directed verdict;
13 and absent that, we also feel that the statute under which
14 he has been charged in our minds is very overbroad. The
15 denial of equal protection of the law had no cause until a
16 week ago to really look at this statute, and I was amazed
17 at the low standard of proof that is required. Looking at
18 it as, you know, with a murder statute, manslaughter, and
19 involuntary manslaughter, we have a statute here that the
20 punishment is of now it's get to murder. But the standard
21 of proof or standard of intent is certainly substantially
22 less than that. It is more akin to involuntary
23 manslaughter, or the very least voluntary manslaughter, so
24 you have people that just at the discretion of the
25 prosecutor can be charged one way or the other and if he's

1 charged with murder he's gonna get instruction on
2 involuntary manslaughter, he's gonna get one on voluntary
3 manslaughter, but here it's -- you have the much lower
4 standard to people equally situated depending on how
5 they're indicted treated much differently. And so we feel
6 that in that way equal protection is denied. It's also a
7 very broad statute and who would encompasses that can be
8 guilty of charge when it talks about takes an action or an
9 omission. You know, you can -- people that have no
10 relationship to a child whatsoever and committed some
11 reckless act not even knowing a child is there could
12 conceivably be prosecuted under this statute.

13 On the issue of the intent I note this very week I
14 saw in the paper where a decorated war veteran was
15 convicted under this statute, received the minimum
16 sentence of 20 years where he had an act of omission but
17 at least that was someone charged in it that would have
18 had a duty to the child. Conceivably this statute would
19 encompass individuals that did not. I was troubled by
20 that very broad language as went through and read the 24
21 cases in this state that have to do with child abuse under
22 this statute. And I may be wrong, Judge. I'm sure you
23 know them inside and out, you wrote a bunch of them, but
24 it looks to me like every one of them was someone who had
25 a duty to the child. I noted when I was reading Pierce,

1 which was a Lyle case and had to do with other evidence
2 coming in and separate but interesting issue about whether
3 it took more than one act to be constituted child abuse
4 where they kept out evidence of other injuries saying that
5 it didn't require a pattern. If that was the majority
6 cited otherwise certainly we wouldn't be here today 'cause
7 there's nothing showing pattern of abuse. But in the
8 dissent in that case I notice when they were talking about
9 the language of the case, and this doesn't relate to the
10 issue upon which the case was decided, but it started
11 making a reference to — of course it's referring to
12 16-3-85. And then they start talking about the language
13 as to homicide by child abuse supports the theory of child
14 abuse dependent upon the evidence or repeated abuse. A
15 child is guilty of homicide by child abuse — and this is
16 in dissent cause of death of a child under the age 11
17 while committing abuse or neglect as defined in Section
18 27-4-90 if the death occurs under circumstances
19 manifesting an extreme indifference to human life. So
20 27-4-90 was in children's code that was repealed. I went
21 on back and read 27-4-90 and the language there actually
22 read in conjunction with this statute would make sense
23 because it narrows that anybody down people doing —
24 committing abuse to individuals that would have a duty to
25 the child and it goes through all these different people

1 that would and all the people that would not. And
2 interestingly enough, in the language of that it talked
3 about a person who has only incidental contact but may not
4 be a caretaker but has not assumed the role of
5 responsibility of a parent or guardian would not be and it
6 specifically talks about babysitters not qualified in the
7 statute, but they were excluded 'cause people not having
8 that duty of care.

9 Now a lot of that same language from that statute
10 transferred over in the new -- in its newest, newest
11 manifestation in 63-70-20. It took me a while to figure
12 that out not being as bright a legal lawyer as my
13 cocounsel gives me credit for. But it starts talking
14 about those same protections in there. And even -- it
15 states -- it has the same language about not including a
16 babysitter. Even in the statute that follows the statute
17 where we're dealing with here in 16-3-95 which talks about
18 the lesser injury, there's somewhat some of that language
19 there about, you know, if the parent or somebody allows
20 somebody to do that who's excluded. So I think that is --
21 that language which is -- it doesn't say it directly
22 applies. Obviously in this dissent in Pierce Justice
23 Burnett thought that it should applied because he was
24 citing it together with the code section that does apply.
25 Obviously he was reading it together, and I think that's

1 an appropriate reading together that saves the statute
2 because it takes out a lot of that emptiness of who would
3 know, who they could be charged and couldn't be charged
4 and making it overbroad and but I think it kind of shocks
5 the conscience as open as it is as to who might be subject
6 to this statute it's so broad. And if you read that
7 language as being incorporated which I – it's not
8 directly saying that it is, but if you make the common
9 sense connection as Judge Burnett did that it should be or
10 that it is, then he's excluded. He's excluded under the
11 statute if you read it that way.

12 I would just ask you to take these things under
13 consideration, Your Honor. It disturbed me when I read
14 the statute and saw that loss – low standard of proof,
15 and the very open door for anybody that could be drawn
16 into this statute for its broadness.

17 THE COURT: All right. State?

18 MR. JEPERTINGER: Your Honor, I think the statute
19 stands on itself. The legislators passed it, Your Honor,
20 and I think the elements fit the crime here in this case,
21 Your Honor.

22 THE COURT: Order. Ab initio Rule 19 of the South
23 Carolina Criminal Rules of Procedure address a motion for
24 directed verdict. "After the State rests its case in
25 chief, (and again after Defense rests), the Defense will

1 make a motion for a directed verdict, or the trial judge
2 may make this motion himself. The judge will direct a
3 verdict in the defendant's favor on any charge in the
4 indictment if there is a failure of competent evidence
5 tending to prove that charge. In ruling on the motion,
6 the trial judge must consider only the existence or
7 nonexistence of the evidence and not its weight." In
8 State versus Williams, cite omitted, the absolute rule is
9 addressed. When ruling on a motion for a directed
10 verdict, the trial court is concerned with existence or
11 nonexistence of the evidence, not its weight. Further
12 edifying the Bench and Bar is State versus Kelsey, cite
13 omitted, "If there's any direct evidence or any
14 substantial circumstantial evidence reasonably tending to
15 prove the guilt of the accused, then the case is properly
16 submitted to the jury." There are a number of
17 presidential rulings that articulate the applicability of
18 this rule to various fact scenarios.

19 In this case without doubt or question the fact
20 record is the quintessential presentation of a
21 circumstantial evidence case. The leading case on
22 circumstantial evidence that is now extant in South
23 Carolina is State versus Grippon, G-R-I-P-P-O-N, 327 S.C.
24 79, 489 S.C.2d 452. As is stated in State versus Cherry,
25 361 S.C. 588, 606 S.C.2d 475, the State Supreme Court

1 instructs: "We hold that the Grippon charge is the sole
2 remaining charge to be utilized by the courts of this
3 State in instructing juries in cases relying in whole or
4 in part on circumstantial evidence. We hold that the
5 recommended language in Grippon is the sole and exclusive
6 charge to be given in circumstantial evidence cases in the
7 state along with a proper reasonable doubt introduction."

8 Here, the circumstantial evidence is sufficient to
9 meet the test of Grippon and thus mandate the submission
10 of the case to the trial jury.

11 Addressing the defendant argument in regard to equal
12 protection I note with some degree of edifying impact the
13 writing of Chief Justice Toal when she reviews the
14 homicide by child abuse statute, and this in quotes from
15 Chief Justice Toal: "In light of the insidious nature of
16 this crime, our legislator created a separate homicide
17 statute related to child abuse. That statute provides
18 that, 'a person is guilty of homicide by child abuse if
19 the person: causes the death of a child under the age of
20 11 while committing child abuse or any neglect and the
21 death occurs under circumstances manifesting an extreme
22 indifference to human life.'" Section 16-3-85(a)(1) 2006.
23 And continuing with the writing of Chief Justice Toal the
24 legislature has defined child abuse or neglect as an act
25 or omission by any person which causes harm to the child's

1 physical health or welfare. Thus, the homicide by child
2 abuse statute criminalizes the specific inflection of
3 abuse as well as a failure to protect a child from abuse
4 which results in the death of that child while exhibiting
5 an extreme indifference to human life. In this way, the
6 statute incorporates more than just the act that causes
7 the death -- it criminalizes the course of conduct which
8 results in the death of a child. In my view, this statute
9 is grounded in the public policy that an adult is not only
10 prohibited from physically abusing a child but also is
11 prohibited from deliberately sitting by and allowing a
12 child's life to be threatened by the abuse of another."

13 That writing by the Chief Justice is indicative of
14 her general review of this statute in the panoramic
15 applicability of this statute to certain fact scenarios.
16 Admittedly, it does not address an equal protection
17 argument.

18 So that the record will be filled with items for
19 appellate activity I directly address the equal protection
20 argument and conclude that the South Carolina General
21 Assembly in its writing intended to place into the code of
22 laws of this state an offense which is applied both by a
23 definitional review and a penalty review an offense that
24 does, in fact, meet the test in regard to a challenge in
25 reference to equal protection. The General Assembly

1 intended to write the statutory code provision that is
2 broad in application. Did the General Assembly violate
3 the equal protection clause in penning this statute? The
4 answer is in the French phrase: "Pas du tout," which
5 means not so, not at all. And it is so ordered. It will
6 be submitted to the trial jury.

7 Do we have the issue ready in regard to the
8 defendant testifying or not testifying, or is that issue
9 still left open?

10 (Attorney confers with defendant.)

11 MS. WINGARD: We are ready to address that. He has
12 decided not to testify.

13 THE COURT: All right, Ms. Clerk, swear him.
14 Come forward.

15 DEPUTY CLERK OF COURT: If you will, sir, place
16 your left hand on the Bible. Raise your right hand.
17 WHEREUPON,

18 JERMAINE DARRELL MAYWEATHERS,
19 having been duly sworn by the Deputy Clerk of Court,
20 testified as follows:

21 THE DEPUTY CLERK OF COURT: Please be seated.
22 State your full name for the record.

23 THE WITNESS: Jermaine Darrell Mayweathers.

24 EXAMINATION BY THE COURT

25 Q Mr. Mayweathers, turn and face me and listen to me

1 closely. You are charged with an offense designated as
2 homicide by child abuse. Do you understand that?
3 A Yes, sir.
4 Q And we are in the trial of your case.
5 A Yes, sir.
6 Q You recognize that?
7 A Yes, sir.
8 Q You have a constitutional right that is most important,
9 and I desire to discuss that with you. You understand?
10 A Yes, sir.
11 Q First and foremost, you have discussed with your
12 lawyers in detail the right of testifying or not
13 testifying; is that correct?
14 A Yes, sir.
15 Q Have you talked to your lawyers to your satisfaction in
16 that regard?
17 A Yes, sir.
18 Q Are you satisfied with your discussion with your
19 lawyers?
20 A Yes, sir.
21 Q And you have made a decision in this case as to what?
22 A Not to testify.
23 Q Not to testify. Is that decision not to testify made
24 freely and voluntarily on your part?
25 A Yes, sir.

1 Q Has anyone put any pressure on you in any way to cause
2 you not to testify?

3 A No, sir.

4 Q Has anyone threatened you in any way to cause you not
5 to testify?

6 A No, sir.

7 Q Your decision not to testify is made of your own free
8 will and accord after you've discussed it with your
9 counsel in detail?

10 A Yes, sir.

11 Q I tell you now you have the absolute right to testify,
12 and if you decide to testify you must answer all questions
13 that I rule are proper questions. Do you understand that?

14 A Yes, sir.

15 Q And you have the absolute right not to testify. Do you
16 understand that?

17 A Yes, sir.

18 Q It's a constitutional right of testifying or not
19 testifying. You understand?

20 A Yes, sir.

21 Q And you understand that you have made this choice
22 concerning testifying or not testifying by concluding that
23 you will not testify?

24 A Yes, sir.

25 Q That's your personal choice?

1 A Yes, sir.

2 Q Do you understand this right completely?

3 A Yes, sir.

4 Q Would you like to ask me any questions concerning your
5 right of testifying or not testifying?

6 A No, sir.

7 Q You understand it completely?

8 A Yes, sir.

9 Q You're satisfied with your decision?

10 A Yes, sir.

11 Q You have made this personal decision yourself?

12 A Yes, sir.

13 Q And you're satisfied with that?

14 A Yes, sir.

15 Q And you do not want to ask me any questions about that?

16 A No, sir.

17 Q All right. Thank you. Please go back around.

18 THE COURT: Order: Pursuant to State versus Orr.
19 304 S.C. 185, 403 S.C.2d 623, and Brown versus State, 340
20 S.C. 590, 533 S.C.2d 308, I have conducted a review on the
21 record with the defendant concerning his Fifth Amendment
22 privilege. The Fifth Amendment provides that, "No person
23 ... shall be compelled in any criminal case to be a
24 witness against himself." United States Constitution
25 Amendment 5. As noted in Orr and Brown the decision to

1 testify or not is a perilous one. If a defendant does not
2 testify, he foregoes the opportunity to tell the jury his
3 version of events. On the other hand, if a defendant
4 chooses to testify, he subjects himself to
5 cross-examination including any possible impeachment."

6 The Court has followed the mandate of State versus
7 Orr and Brown versus State and has conducted colloquy with
8 the defendant concerning the Fifth Amendment privilege.

9 First I conclude that the defendant completely
10 understands the Fifth Amendment privilege and has
11 discussed this matter with counsel to his satisfaction.
12 Second, I conclude that the decision by the defendant not
13 to testify is a free and voluntarily decision made on his
14 part after being advised of his constitutional rights and
15 it is so ordered. Obviously I will give to the jury a
16 very detailed instruction in regard to the defendant not
17 testifying, and defendant's counsel will have the right to
18 make the last argument to the jury. 2:30.

19 (WHEREUPON, a lunch break was taken.)

20 THE COURT: All right, Counsel, ready to proceed
21 with the summation?

22 MR. JEPERTINGER: The Defense needs to rest on the
23 record unless they're going to present any other
24 witnesses, Your Honor.

25 THE COURT: I think they --

1 MS. WINGARD: We indicated we are not going to call
2 any witnesses so we would rest. I would ask, though, to
3 revisit the circumstantial evidence charge in light of
4 State versus Hernandez. That is a 2009 case. And in that
5 case the Supreme Court said that there should have been a
6 directed verdict of not guilty, but there is a footnote
7 and that footnote reads as follows: The traditional
8 circumstantial evidence charge provides that when the
9 State relies on circumstantial evidence to prove its case
10 the jury may not convict the defendant unless every
11 circumstance relied upon by the State be proven beyond a
12 reasonable doubt and all of the circumstances so proven be
13 consistent with each other and taken together point
14 conclusively to the guilt of the accused to the exclusion
15 of every other reasonable hypothesis. Now that's the old
16 Edwards charge.

17 THE COURT: Yes, State versus Edwards.

18 MS. WINGARD: It cites Edwards. And then it says,
19 "Although in Cherry the Court abandoned this charge and
20 held that it may confuse the jury by leading it to believe
21 that the standard for measuring circumstantial evidence is
22 different from that measuring direct evidence it
23 nonetheless illustrates a lack of evidence against the
24 petitioners." I read that though, even though the Court
25 acknowledges Cherry to say that this is the standard for

1 circumstantial evidence.

2 **THE COURT:** I'm telling you I'm not going back to
3 State versus Edwards. They've discussed it at judicial
4 conference, and I think that it's an aberration in regard
5 to writing; and I understand sometimes when appellate
6 judges write, that they don't exactly make clear their
7 position. But I am not going to deviate from Edwards and
8 if the Supreme Court says otherwise so be it. But over
9 and over again at judicial conference including in August
10 of 2009 we had a visit to Grippon and I'm not going to
11 deviate from Grippon. If that's intended to deviate from
12 Grippon they sure didn't make that clear.

13 **MS. WINGARD:** Yes, sir, I understand, but I felt
14 like I needed to be protected on the record in that
15 regard.

16 **THE COURT:** Absolutely. And let the record show
17 that I absolutely refuse to follow State versus Hernandez.

18 **MS. WINGARD:** Yes, sir.

19 **THE COURT:** If it is intended to go back to State
20 versus Edwards the Supreme Court and the Court of Appeals
21 has discussed in ad nauseam at various seminars and
22 meetings including the mandated meeting in August where we
23 have to go. And so I'm staying with Grippon and so be it
24 And if you're over 21 you have to abide by what you've
25 done, don't you, Ms. Bailiff?

1 THE BAILIFF: Yes, sir.

2 THE COURT: All right. There is a little problem
3 that developed just before the lunch hiatus. First and
4 foremost, people, outside there's a big plaque of Chief
5 Justice Toal saying no cell phones are allowed in the
6 courtroom. It's out there on the door. There's a plaque
7 downstairs from Chief Justice Toal as you get on the
8 elevator. Now I'm gonna take about two minutes to engage
9 in a pristine response. Judge Markeley Dennis gave a
10 juror two days in jail overnight when she did not abide by
11 the order of the Chief Justice. If you've got a cell
12 phone in this courtroom now you need to walk outside and
13 leave it with someone. I repeat again, just for the sake
14 of emphasis, if you've got a cell phone in this courtroom
15 now you need to walk outside and leave it with someone
16 because if it goes off, I don't care who you are, I don't
17 care if you're President Obama on down, you're going to
18 get some jail time. Now does anybody need to move the --
19 take the cell phones out. Take them out.

20 (Pause.)

21 THE COURT: All right. Anything else before I
22 bring the jury out?

23 MR. JEPERTINGER: Not from the State, Your Honor.

24 THE COURT: Defense?

25 MS. WINGARD: Nothing.

1 (WHEREUPON, the jury was returned to the courtroom
2 at approximately 2:29 p.m., and the following proceedings
3 commenced in open court.)

4 THE COURT: Ms. Wingard, the Defense rests, is that
5 correct?

6 MS. WINGARD: Yes, sir.

7 THE COURT: On the record, all right. Jurors, the
8 lawyers are now going to discuss this matter with you.
9 And as they discuss the matter with you you will be
10 considering a verdict. Mr. Foreman, you will sign the
11 verdict on behalf of the jury. It must be unanimous. It
12 must be unanimous. There cannot be any spilt like eleven
13 to one, ten to two. When you sign your name that
14 guarantees to the Court that you have signed is in fact a
15 unanimous verdict. Do not put your name on the line
16 unless everyone agrees. It must be unanimous. Whatever
17 the verdict is it must be unanimous. The possibilities
18 are: One, not guilty. If the jury unanimously finds the
19 defendant not guilty, all twelve agreeing to that, sign
20 number one above the line where it says foreperson. Or
21 number two, guilty of homicide by child abuse. If the
22 jury unanimously, all jurors agreeing, finds the defendant
23 guilty of homicide by child abuse sign that. Once again,
24 do not sign until all twelve freely and voluntarily agree.
25 Every juror has an equal vote. Every juror has a right to

1 a vote.

2 Mr. Jepertinger or Mr. Richardson, who will make the
3 summation?

4 MR. JEPERTINGER: I will, Your Honor.

5 THE COURT: Mr. Jepertinger, you're recognized.

6 MR. JEPERTINGER: Yes, sir. Mr. Foreman, and
7 ladies and gentlemen of the jury, you know, we started
8 this case on Monday and it really is a tragedy when you
9 consider what we're -- what we're doing here.

10 Mr. Richardson and I have asked you to weigh judgment
11 against a 16 year old boy now. And I'm throwing that
12 white elephant out right in the air. First thing we do
13 here to talk about. I'm cognizant he's a teenager and it
14 breaks my heart that I have to prosecute a teenager for so
15 grievous and heinous a crime. But my sympathy for
16 Jermaine Mayweathers ends when I consider what he did to

17 Child at the time was a five year
18 old little boy with all the hopes and aspirations that a
19 five year old boy would start. Now think about it. He
20 would have been starting first grade probably this year,
21 and he's not going to have that experience because of what
22 Jermaine Mayweathers did to him on July the 25th, 2008. .
23 As the years pass I'm sure Child would have grown to be
24 a fine young man, would have gone to middle school, maybe
25 played sports in high school. But that was all taken away

1 from him because of what Jermaine Mayweathers did to him
2 on July 25th, 2008. Might have grown, the love of his
3 life, got married. Jermaine Mayweathers took that from
4 him on July the 25th, 2008. The possibility of looking at
5 that ultrasound and seeing his child in the future.

6 MS. WINGARD: Objection, Your Honor. I hate to
7 object in the middle of final argument, but I think this
8 is going a bit far field and I know there is certain
9 leeway but I believe this is going over the line.

10 THE COURT: The State may discuss with a trial jury
11 the efficacy of the acts of the defendant that have been
12 alleged and that includes a general discussion with the
13 jury concerning death and what death means, and I at this
14 time conclude to this point it is proper argument. Now I
15 will listen closely as we proceed.

16 MS. WINGARD: Thank you, Judge. May my objection
17 continue. I hate to keep jumping up.

18 THE COURT: Absolutely.

19 MS. WINGARD: If you think the line has crossed if
20 you would stop him.

21 THE COURT: That is noted for the record and I
22 overrule that objection. You may proceed.

23 MS. WINGARD: Thank you.

24 MR. JEPERTINGER: As I was stating, the ability of
25 a father to look at the ultrasound of a child, that's all

1 gone now because of what Jermaine Mayweathers did on
2 July 25th 2008. Those facts we cannot forget, what
3 Jermaine Mayweathers did to Child He's gone
4 now and the simplicity of this case falls in this
5 category, ladies and gentlemen of the jury, that there
6 were only three people in the mobile home on Gilbert Drive
7 on July 25th, 2008. One of them was the victim Child
8 The other one was K.P. a little eight
9 year old boy who had to sit as high as he could to sit in
10 this witness chair to testify to what he saw on that day
11 who had to tell you how he saw Jermaine Mayweathers take
12 this belt and beat his five year old brother. What did he
13 hear? In his words he heard bamming and beating on the
14 wall. That's what he heard. What he saw was the striking
15 of the belt. I tell you, folks, he was a credible witness
16 in his tender little voice. The other individual in that
17 house was Jermaine Mayweathers. We know it wasn't Debra.
18 How do we know that? K.P. said she wasn't there. She
19 had left for work. We know it wasn't Willie Gerido.
20 K.P. said he wasn't there. Guess what Jermaine also
21 said as you heard in his statement to Officers Lutcken,
22 Lowder, and Ms. Andrews from the Department of Social
23 Services that neither of them were there. The only other
24 person that was in that house. There was no intruder.
25 There was no one else other than Jermaine Mayweathers.

1 What did Mayweathers say? All right, according to Lowder,
2 when they woke up when Child went and you said he woke
3 up first, went into the kitchen, then he came back and
4 went to the bedroom with K.P. Yeah, I told him to go
5 back to the bedroom. What time was that when that
6 happened? Probably around 10 or 11. You remember what
7 was on TV? No, that was when I was playing the game. All
8 right, how was Child acting then? I mean, he obviously
9 talked to you. He walked in the kitchen, he was fine, and
10 you didn't notice anything wrong with them? No. Okay,
11 and that was about 10 or 11. When was the next time you
12 checked on him or saw them? Around one. And what
13 happened at that time? I gave him a bologna sandwich.
14 Who did he give a bologna sandwich to? Both of them. Did
15 both of them – did Child and K.P. did they eat
16 their bologna sandwich? Yes. So Child ate a bologna
17 sandwich. And did he seem okay to you at that time?
18 Uh-huh. All right, he didn't say anything to you about
19 feeling bad? Nope. All right, what happened after that?
20 We just watched TV and they just got – was in the room
21 playing like they usually do and I was in there watching,
22 watching TV, and then playing the game. They was in the
23 room playing? Uh-huh. And what was you doing? Playing
24 video game? Uh-huh. Did they come out and play the game
25 with y'all? No. Did y'all go outside and play? No.

1 Don't know anybody. But you know each other? Did all
2 three of y'all go out and play together? No, they never
3 really asked to go outside. Did y'all every do that, go
4 out and play in the yard or in the woods or? It's too
5 hot. So he stayed inside all the time? Well, I don't
6 really know anybody so I really don't have no reason to go
7 out. All right, so you stayed in the room playing a video
8 game and left them two by themselves in the back watching
9 TV. Yeah, well, they're in the room right next to me.
10 Okay, watching TV, okay. Well what happened after that?
11 How did we get to the point you called 9-1-1? What
12 happened to make your call to 9-1-1? Oh, they was playing
13 and then I came out the room cause they were making too
14 much noise so I separated them. And then I guess 'cause
15 he was in the room with no TV he just went to sleep.
16 Well, folks, I tend to think maybe that's when Child
17 got beat with the belt. I think that's when you heard the
18 bamming and the beating on the wall. There is no other
19 reasonable explanation in this case, how this poor five
20 year old suffered the severe brain trauma that he did. It
21 had to happen after 1:00 after that bologna sandwich. How
22 do I know that? Do you remember what Doctor Atwood
23 testified to this morning? What would he have been able
24 to do at the onset of the injury? Maybe moan. Would he
25 be able to roughhouse? No. Would he be able to play?

1 No. Would he be able to watch TV and sit up and eat? No.
2 And again, no. Doctor Presnell, what would his
3 functionality be at the time of this brain injury? Could
4 he sit and watch TV? No. Could he eat? No. Could he go
5 out and play and roughhouse? No. And no.

6 I suggest to you between one and five on July 25th,
7 2008 he was beaten pretty much to death, to death, by the
8 only individual that could do it, Jermaine Mayweathers.
9 The first person objectively that got to see Child
10 after that 9-1-1 call was placed was Kevin Qwyer. You
11 remember him? He was the EMT that came in. What did he
12 say? Breaths were about, what, two, three breaths a
13 minute. Something didn't add up. He had a gut feeling
14 that something was wrong. Something wasn't adding up in
15 what he heard. Right from the start Child's body was
16 telling us that this little boy who would watch television
17 and got up and played and ate lunch, something bad
18 happened to him between that time. When asked who was at
19 the house, who was – only Jermaine, the two little boys,
20 and himself. Not daddy, not Deb, no one else.

21 I thought it quite interesting when Doctor Atwood
22 testified that when he saw these lineal abrasions on that
23 little boy's body. He pointed out the circles on those
24 abrasions that are so very consistent with that belt. Now
25 I anticipate the Defense getting up here and arguing,

1 well, you know, Doctor Presnell came in and she really,
2 really can't give us a fixed time of when those bruises
3 took place. She gave us a window. And you know, even
4 Doctor Presnell said, you know what, we may be trying to
5 make us pinpoint the time. But one thing that I would
6 like to ask and thought keeps coming through my mind and I
7 think Doctor Presnell answered it, when those horrible
8 gruesome photos when she showed you the leg and she said
9 that muscle tissue had been torn away, how would that
10 little boy on Thursday night stay up and watch Roscoe
11 Jenkins to two in the morning with his -- with his family
12 and not complain about it. You know, if the Defense is
13 trying to infer that Debra beat him or is cognizant of
14 someone else beating him and not taking him to the doctor,
15 that doesn't hold with her history, does it, because you
16 remember when Debra testified every time that kid had
17 something happen to him whether he was running into a
18 coffee table or someone throwing something at him and
19 hitting him or even when he twisted his ankle, if you
20 recall, she always took him to the emergency room. You
21 know, that just doesn't sound like a person that doesn't
22 give a rip about her kid. That sounds like an every
23 concerned mother I've ever known. I just can't picture
24 this woman seeing that happen to her son and just say, oh
25 well, let's forget about it, with the tissue ripped from

1 her son's legs. The only time that could have been done
2 is when she was not at home to protect her child.

3 This case is a tragedy. Folks, you took an oath to
4 do justice both by the State and this defendant. The
5 judge at the beginning of his charge asked you to reach a
6 decision that, and using the judge's term, and he went to
7 the Latin of veredicto, to speak the truth. The decision
8 you reach today must speak the truth. Sometimes the truth
9 hurts, but I'm going to ask you to speak the truth. Now
10 specifically, Jermaine Mayweathers is charged with the
11 crime of homicide by child abuse. A person is guilty of
12 homicide by child abuse person causes the death of a child
13 under the age of eleven while committing child abuse or
14 neglect and the death occurred under circumstances
15 manifesting an extreme indifference to human life.

16 Child abuse or neglect under the statute means an
17 act or omission by any person which causes harm to the
18 child's physical health or welfare. I think in every
19 aspect of this case that we have shown you beyond a
20 reasonable doubt that there has been a homicide by child
21 abuse.

22 Now the law requires the State to prove a case
23 beyond a reasonable doubt, and sometimes the courts have
24 defined beyond a reasonable doubt by this simple term.
25 It's the proof that could cause a reasonable person to

1 hesitate to act, or it's doubt that would cause a
2 reasonable person to hesitate to act. I don't think
3 there's gonna be any hesitation in this case. There
4 should not be. You shall also hear from the judge that
5 there are basically two types of evidence, direct and
6 circumstantial evidence. Direct evidence is the type of
7 evidence that we perceive with our senses, things that we
8 see, eyewitness testimony, what we hear, what we taste,
9 what we smell, what we perceive with our senses. There's
10 also a type of evidence as I told you called
11 circumstantial evidence. Circumstantial evidence is a
12 proof of a chain of facts or circumstances that lead to
13 another fact. Circumstances in this case that I think if
14 we look at all the chain what Child told us how –
15 excuse me, well K.P. told us, what Child's body tells
16 us and you start linking that chain what was told to us
17 even by Jermaine Mayweathers, that chain leads directly to
18 only one individual in this case and that's Jermaine
19 Mayweathers. So sad, so very sad.

20 Once again, folks, I'm gonna ask you to do what you
21 promised the Court to do, render a verdict that speaks the
22 truth. Please find Jermaine Mayweathers guilty of
23 homicide by child abuse. Thank you.

24 THE COURT: Ms. Wingard, you're recognized.

25 MS. WINGARD: May it please the Court,

1 Mr. Jepertinger, Mr. Richardson, Mr. Foreman, ladies and
2 gentlemen of the jury. This is indeed a tragic day, a sad
3 day, and it breaks my heart to be here as well. I've been
4 a lawyer 37 years. Most of those 37 years I've been in
5 the criminal justice system. I've been on both sides and
6 I've even been in the middle, briefly in municipal. And I
7 can tell you that this case has weighed more heavily on my
8 heart than any matter I have ever dealt with because what
9 is more tragic than losing a five year old little boy.
10 It's tragic; it's sad. We've lost one child and what
11 could be even more tragic is losing a second child 'cause
12 that's what we're dealing with today. We're dealing with
13 a child a boy. And tragically one mother has lost a
14 child. I don't want a second mother to lose a child.

15 Now let's talk about the reasonable doubts in this
16 case. K.P. is an adorable little boy, precious as he
17 can be, but he answered yes to virtually every question he
18 was asked. You make a suggestion to him and he would
19 agree with you. When he was first asked about this right
20 after it happened, he was talking about his mother beating

21 Child with a belt. He said that Jermaine didn't do
22 anything. His statements were all over the place.
23 Truthfully his testimony just was not credible, and he's a
24 precious child and he probably really has no idea what
25 happened that day. But he's certainly trying to please

1 people. He's giving all these different statements and
2 explanations of what happened.

3 And let's talk about this belt. This belt is -- the
4 whole scenario with this belt is bizarre. I asked
5 Investigator Jenco, I said, when did he identify this
6 belt. You know, there were eight belts seized. You
7 remember there were eight belts taken by law enforcement.
8 And I asked her, I said, when did he identify this belt.
9 And her response was when he was getting ready to testify
10 in the Solicitor's Office. He just saw this belt. And I
11 also think it odd where this belt was found. Recall it
12 was found in the master bedroom right there under the bed.
13 Now the boys, all of the discussion about what was
14 happening with the boys was down on this end of the mobile
15 home, but you recall that Corporal Bird testified in belt
16 was found in the master bedroom a little bit under the
17 bed. He said maybe about 2-feet. I don't know whether
18 there was an implication that this belt was being hidden
19 somehow; but you will recall too as we put some puzzles
20 together and we talk about reasonable doubt, the whole
21 family Thursday night with the exception of Jermaine was
22 down in that master bedroom watching movies. That's what
23 Debra testified to, all down there watching movies.
24 Jermaine's all the way in the other room playing games.
25 Doesn't it make more sense that something happened with

1 that belt that Thursday night, early Friday morning? You
2 will recall that they were all down there together, and
3 you will recall also that that would be consistent with
4 what the doctors found the time line for the bruises could
5 be expanded to Thursday. If Jermaine had taken this belt
6 and brutally beat that child, why would he have taken it
7 and stuck it under the master bed? This belt was not
8 found until the second search, the second search, three
9 days after this. Now if this were the weapon used on this
10 child why would he have left it there? He had ample
11 opportunity to get rid of this belt if this was, in fact,
12 the weapon that was used. He was there by himself with
13 Keshawn (sic) remember EMT said, I wouldn't let him go, we
14 don't take children. He had to stay there. There was
15 nobody to take him. He could have destroyed this belt
16 then. No forensic, no examination to see fingerprints,
17 nothing to connect this belt to Jermaine.

18 Moreover, you will remember that the Sheriff's
19 Department said that there are various belts. They have
20 seven more that were found on the other end of the house
21 in the area of the children's room. There is as much
22 circumstantial evidence to suggest Debra beat this child
23 as Jermaine. Maybe Willie that night; I don't know. But
24 we certainly have not narrowed it down to one person. And
25 you know, it's so hard to talk about Debra. Gosh, I'm a

1 mom. I just can't imagine, but I've got to. I've got to
2 say some things. She was not forthcoming with us.
3 Remember, I had to get Investigator Jenco to correct some
4 things like she admitted being mad at the boys Wednesday
5 night when she talked to the deputies, and she said that
6 she had gotten belt out after Wednesday night. Now she
7 said, oh, I didn't hit him anywhere on the body, I just
8 hit him on the hand. And she was mad at them because they
9 were roughhousing and she talked about messing up the
10 blinds. Well, when she's testifying here she completely
11 eliminated that, and so I had to ask the investigator to
12 clear that up and to make sure that I understood
13 correctly, and she said, yeah. That was what she said on
14 the stand that on Wednesday night there was an issue.

15 Another reasonable doubt. No physical evidence.
16 There is absolutely no physical evidence. Now I just find
17 it hard to believe that with the amount of force that
18 Doctor Atwood kept talking about, about supernatural force
19 to cause this brain injury, and yet, you look at these
20 pictures of the home taken while they were at the hospital
21 taken a few hours after Child was at the hospital --
22 and look at them; you'll have them in there. The house is
23 not disarrayed. You don't see holes in the wall. The
24 deputies, investigators, went there and they didn't --
25 they didn't see the kind of scene that you would expect

1 that you encounter if there had been this violent use of
2 supernatural force. The pieces aren't adding up. Now
3 what caused this grave scene? It's just hard to
4 imagine, and I think that we can agree that sometimes not
5 too long after he had the head injury, and remember that
6 we can separate the bruises and the head injury. Shortly
7 after the head injury he would have – he would have shown
8 some signs. But Jermaine was forthcoming in his
9 statement. He said they were roughhousing; they were
10 playing. They were being bad. And finally, finally
11 Doctor Presnell said, well you know, a single fall can
12 sometimes be fatal. She finally made that statement. Now
13 I can just imagine these two little boys roughhousing,
14 playing, it's late in the day, and they are acting like
15 little boys act. Look at the substantial wood of that
16 bunk bed. You don't think he can be roughhousing on that
17 bunk bed, hit it? Is it illogical to assume that they're
18 roughhousing on the bunk bed, hit the bunk bed, and hit
19 the floor that would cause two head injuries. And could
20 that be why K.P. was so upset, so afraid that his mother
21 was going to get mad at him after shawar – Child got
22 injured because they had been fussed at. They had been
23 disciplined because they roughhoused and that's one thing
24 she said. Child was hyperactive and she disciplined
25 him. She would fuss at him for that. You know, doctors

1 can sometimes not get everything entirely right. We know
2 Doctor Atwood first suggested this child had been a victim
3 of sexual abuse, and we know that that's not correct. I
4 mean, even the State said, no, that, that's not happened,
5 that didn't happened. I mean, we took DNA from everybody,
6 but naw, we just thought that and just discounted that
7 after a while. Doctors can sometimes be wrong, partially
8 wrong. You know, sometimes they will make a snap
9 judgment.

10 The other reasonable doubt I'm gonna talk to you
11 about is Jermaine himself. Debra described him as a quiet
12 child. She didn't have any trouble with him. She had
13 absolutely no concern about leaving her children with him.
14 That's a heavy responsibility, a 15 year old who really is
15 no kin to these children to just be left with the
16 responsibility. Now Jermaine has come down here to see
17 his father, and his father just takes off, leaves him,
18 leaves him with this responsibility. He tells his child
19 and the lady he lives with that he's going to Anderson to
20 visit some relatives when in fact he ends up going to New
21 Jersey, takes a road trip with his buddies instead of
22 staying down here with his son who he's come down here
23 from Virginia to be with. I wish we could put him in jail
24 quite frankly.

25 Jermaine did not show extreme indifference to this

1 child. Jermaine that day fed them. He tried to act as
2 the referee for them. He tried to separate them. He
3 cleaned up the vomit. It's this a child who shows extreme
4 indifference? He called 9-1-1 and he had to go in search
5 of a way to call 9-1-1. He had been left there with the
6 responsibility of these two little boys with not a phone
7 in the house in a strange area. Debra decided she would
8 take the cell phone to work. Now she's going to work at
9 the Holiday Inn Express. She has a way to communicate out
10 there if she has an emergency. But this child, this 15
11 year old, is left in the care of these two children with
12 no way to communicate. Now maybe things would have turned
13 out differently if when they first started fighting and
14 carrying on he had had a phone and he could have picked it
15 up. He could have called their mama and said, you know, I
16 can't keep these boys separated. They're fighting,
17 they're carrying on, I don't know what's gonna happen with
18 them. If he hadn't been out there, if when they started
19 fighting and they started getting out of control he had
20 some way of communicating wouldn't that make a difference?

21 You know, it's interesting we can't say what we wish
22 would have happened or would have happened, but I would
23 have loved to have known what would have happened if Debra
24 had taken Child to the hospital when he had the knot
25 the night before. You remember he had a knot? Everybody

1 agreed he had this knot on Thursday. And you can't blame
2 her. She's in pain; she's suffering. But you know, as
3 you look back, you know, if there had been a cell phone
4 there if his dad hadn't gone out of town, would these
5 little boys have gotten out of control, would these little
6 boys been fighting and jumping off bunk beds, what would
7 have happened?

8 We can't go back. There's so many things that I
9 know everybody involved in this case wishes that we could
10 change it, but we can't. And so, once again I ask you to
11 please not turn one tragedy into two. I ask you to look
12 at the many reasonable doubts in this case, some of which
13 I've talked to you about and some of which you'll come up
14 with on your own collectively as the jury. I thank you
15 for your time and attention. I thank you for taking your
16 oath seriously, and I ask you don't make Jermaine
17 Mayweathers a second tragedy.

18 THE COURT: Mr. Foreman and members of the jury, my
19 charge will take about 45 minutes. I'm going to give you
20 a break now. When you take the break do not discuss the
21 facts; do not talk about the facts. Do not discuss that
22 at all. But I will allow you to do this, talk among
23 yourselves once I give you case for decision, of course,
24 I'm gonna keep you together. It will be about 45 minutes
25 in terms of the full charge. If you decide that you want

1 to come back the first thing in the morning I'll let you
2 do that. That will not be a unanimous matter, just simply
3 majority, majority Mr. Foreman. Once again, don't talk
4 about the facts. Don't talk about the case. Just simply
5 decide if you want to stay here this afternoon, get the
6 charge on the law which will be about 45 minutes, take you
7 around 4:00 or a little after, and then I'll give you the
8 case for decision. And then of course once you get the
9 case for decision I will keep you together. Please go to
10 your jury room briefly and discuss that and then we'll
11 talk.

12 (WHEREUPON, the jury was removed from the
13 courtroom at 3:25 p.m., and a recess was taken.)

14 (WHEREUPON, the jury was returned to the courtroom
15 at approximately 3:29 p.m., and the following proceedings
16 commenced in open court.)

17 THE COURT: The word, Mr. Foreman, is that the jury
18 is ready to proceed?

19 THE FORELADY: They are.

20 THE COURT: Members of the jury, please listen to
21 me carefully. The paper that I hold in my hand is called
22 an indictment. It is a pending charge for homicide by
23 child abuse. It is not evidence. It does not prove
24 anything in the case. It's simply the charging paper used
25 to bring the matter for court action. To this indictment

1 and to the pending charge this defendant has pled not
2 guilty. That plea of not guilty places the burden of
3 proof upon the State of South Carolina to prove the
4 defendant guilty beyond a reasonable doubt. The defendant
5 is presumed to be innocent unless and until the State has
6 established his guilt beyond a reasonable doubt. A person
7 charged with committing a criminal offense in South
8 Carolina is never required to prove himself innocent. The
9 defendant is presumed to be innocent unless and until the
10 State has established guilt beyond a reasonable doubt. It
11 is a vital important rule of the law that the defendant in
12 a criminal trial, no matter how grave or serious may be
13 the offense with which he is charged, must always be
14 presumed innocent unless and until his guilt has been
15 proven beyond a reasonable doubt.

16 This presumption of innocence is legal proof of
17 innocence. This presumption of innocence remains with the
18 defendant at all times from the moment of his arrest
19 throughout the trial proceeding and goes into your jury
20 room and remains with the defendant unless and until you,
21 the jury, reach a verdict of guilty beyond a reasonable
22 doubt.

23 The burden of proof is upon the State to prove the
24 defendant guilty beyond a reasonable doubt. What is a
25 reasonable doubt in the law? A reasonable doubt is the

1 kind of doubt that would cause a reasonable person to
2 hesitate to act. Let me present that again to you for the
3 sake of emphasis. What is a reasonable doubt in the law?
4 A reasonable doubt is the kind of doubt that would cause a
5 reasonable person to hesitate to act. By the constitution
6 and laws of the State of South Carolina you, the jury, are
7 the sole judges of the facts and evidence in this case. I
8 am not permitted to intimate any opinion that I may have
9 in the case or to show any feeling to you as to what I
10 think about the facts, evidence, or the guilt or innocence
11 of this defendant. I am not permitted to indicate to you
12 how I feel about the testimony and evidence presented. I
13 tell you now I do not have an opinion in this case. But
14 above that, under the constitution I am not entitled to an
15 opinion on the facts. I have made some trial rulings on
16 matters of evidence in your presence. Please do not
17 derive any inference from any ruling that I have made as
18 to any opinion or feeling on the facts. I tell you now,
19 again, that I am not entitled to an opinion under the
20 constitution.

21 In determining what the facts are in this case you
22 of necessity must pass upon the credibility of the
23 witnesses who took that witness stand. You are the sole
24 judges of the credibility of the witnesses. Credibility
25 in the law means believability. Can I believe this

1 witness; is this witness believable; is this witness
2 credible? The value and weight to be given to the
3 testimony is in your sound discretion. You alone must
4 decide the force and effect and the truth of the
5 testimony. In making a determination as to the
6 credibility of a witness there are many factors that you
7 may and should take into consideration such as the
8 appearance and manner of the witness stand, and it is
9 known in the law as the demeanor of the witness, the
10 demeanor of the witness on the witness stand.

11 You may take into consideration other factors. Did
12 the witness have an interest in the outcome of the trial,
13 was the witness forthright or hesitant, was the witness'
14 testimony consistent or did it contain discrepancies, what
15 was the ability of the witness to know about the facts
16 concerning which he or she gave testimony, did the witness
17 have a cause or reason to be biased or prejudiced in favor
18 of the testimony that he or she gave, was the testimony of
19 the witness corroborated and made stronger by other
20 testimony and evidence or was it made weaker and impeached
21 by other testimony and evidence presented. Remember, you
22 are the sole judges of the facts in the case and the
23 believability of any and all witnesses. As jurors you
24 have the right to believe a small portion of a witness'
25 testimony and disregard the larger part, or you may

1 believe a larger portion of a witness' testimony and
2 disregard the smaller portion. You may believe a witness'
3 testimony in its entirety or you may completely reject a
4 witness' testimony in totality, not doing that arbitrarily
5 but if you have sound reason in the record for doing so.
6 You may believe the testimony of a single witness against
7 several or several as against the one. Most certainly you
8 do not determine the matter of credibility or
9 believability by counting the witnesses.

10 Throughout this entire process you have but one
11 single objective and that is to seek the truth regardless
12 of what source that truth may come. By the very same
13 constitution and laws which make you the finders of the
14 fact, I am the trial judge made the sole and only
15 instructor in the law. Under the oath that you took you
16 must accept as correct the law as I charge it to you. In
17 that regard neither the jury nor the Court should be
18 concerned with what the law ought to be in this state, but
19 rather, what the law actually is. The defendant is
20 entitled to every inference in his favor which can
21 reasonably be drawn from the evidence. When two
22 inferences may be drawn from the same set of facts, one
23 consistent with a verdict of guilty and one inference
24 consistent with a verdict of not guilty, the defendant is
25 entitled to the inference which is consistent with a

1 verdict of not guilty. You cannot find this defendant
2 guilty based upon suspicion, conjecture, or speculation,
3 no matter how strong. A conviction can only be based upon
4 proof of guilt beyond a reasonable doubt. If the proof
5 does not meet that standard you must find the defendant
6 not guilty.

7 The defendant in this case has not testified. This
8 is his constitutional right. It is not a circumstance you
9 can take into consideration or even allow to enter into
10 your discussion in the jury room. Under the constitution
11 of the State of South Carolina and the United States
12 Constitution it is the defendant's constitutional right
13 not to testify. The burden of proof is upon the State of
14 South Carolina to establish his guilt by competent
15 evidence beyond a reasonable doubt. The fact that the
16 defendant did not take the witness stand and testify in
17 his own behalf does not create any inference against him.
18 The jury must not permit that fact to weigh in the
19 slightest degree against this defendant, nor should this
20 fact enter into discussions or deliberations of the jury
21 in any matter. You must not, you cannot, discuss that
22 matter in the jury room.

23 There are two types of evidence under South Carolina
24 law. They're direct evidence and circumstantial evidence.
25 On a contested factual issue that you now decide and
26

1 determine you may have some direct evidence on that point
2 and some circumstantial evidence on that point, thus, a
3 combination of the types of evidence. Direct evidence,
4 what is it in the law? Direct evidence is the testimony
5 of a person who asserts or claims to have actual knowledge
6 of a fact such as an eyewitness. Circumstantial evidence,
7 what is it? Circumstantial evidence is the proof of a
8 chain of facts and circumstances indicating the existence
9 of a fact. The law makes absolutely no distinction
10 between the weight or value to be given to either direct
11 or circumstantial evidence, nor is a greater degree of
12 certainty required of circumstantial evidence than of
13 direct evidence. You should weigh all the evidence in the
14 case. After weighing all the evidence if you're not
15 convinced of the guilt of the defendant beyond a
16 reasonable doubt you must find the defendant not guilty.

17 Lay witnesses are limited to testifying about facts
18 within their knowledge. Lay witnesses are not allowed to
19 give opinions. There are certain witnesses called expert
20 witnesses who by their training, education or experience,
21 are considered as experts in a particular field. Expert
22 witnesses may give their opinions in that field. Based
23 upon the facts of a matter and their conclusions and
24 opinions constitute evidence to be considered by you in
25 connection with all of the other testimony and evidence in

1 the case. You may consider the expert's opinion just as
2 you do all other evidence in the case. It is for the jury
3 to give it such weight as you and your experience and
4 discretion may determine. You must weigh such evidence
5 and accept or reject it in the same manner that you treat
6 all other evidence in the case. The testimony of experts
7 on a subject that is little known to the general public is
8 entitled to consideration. Such testimony, however, must
9 be submitted to your judgment to be weighed by you as a
10 part of the evidence in connection with all the other
11 facts in the case. The testimony of the experts is to aid
12 and assist you as jurors, not to dominate or control you
13 in the decision of questions of fact. The opinions,
14 conclusions, and deductions of expert witnesses do not
15 preclude yours. You are required to decide disputed
16 questions after comparison and consideration of all the
17 evidence in the case. You, alone, must decide the full
18 efficacy and impact of so-called expert testimony.

19 There has been admitted into evidence in this case a
20 statement alleged to have been made by the defendant.
21 Before you may consider this statement as evidence for any
22 purpose you must determine four questions. One, did the
23 defendant make the statement? Two, was the defendant
24 warned of his constitutional rights. Three, did the
25 defendant knowingly and intelligently waive his

1 constitutional rights? And four, was the statement given
2 freely and voluntarily? The fact that the Court has
3 admitted a statement into evidence should not be
4 considered by you as any evidence whatsoever that the
5 defendant made such statement or that the constitutional
6 safeguards, which are required, were in fact provided and
7 waived by the defendant or that the statement was
8 voluntarily given because these issues are for you, the
9 jury, to determine. The State must prove beyond a
10 reasonable doubt each of the four essentials or the four
11 requirements which I've just stated to you before you may
12 consider the statement as evidence for any purpose
13 whatsoever.

14 As to the first requirement, did the defendant make
15 the statement. If you conclude that the defendant did not
16 make the statement you must then completely and totally
17 disregard the statement. If you conclude the defendant
18 did not make the statement you cannot and you must not
19 consider the statement as evidence in any manner
20 whatsoever, and you should completely disregard the
21 statement in its entirety and every part of it. If you
22 find the defendant did make the statement you must then
23 consider the second requirement. The second requirement,
24 was the defendant warned of his constitutional rights.
25 These are referred to in the law as the Miranda warnings.

1 When an individual is taken into custody or otherwise
2 deprived of his freedom of action in any significant way
3 by a police officer he must be warned of his
4 constitutional rights prior and before custodial
5 interrogation or custodial questioning. These rights are:
6 One, he has the right to remain silent. Two, any
7 statement he does make can and will be used against him in
8 a court of law. Three, he has the right to select a
9 lawyer of his choice, but if he does not have the money or
10 resources to employ a lawyer the Court will appoint and
11 provide a lawyer to represent him without cost or expense
12 to him if he so desires. Four, he has the right to
13 consult a lawyer before answering any questions or making
14 any statement. Five, he has the right to have his lawyer
15 present with him at all times during all interviews and
16 all interrogations. If you determine that these
17 constitutional warnings were not given to the defendant
18 prior to interrogation and the taking of the statement or
19 that the defendant was not afforded the opportunity to
20 exercise these rights you must completely disregard the
21 statement, and you cannot consider the statement as
22 evidence in any manner whatsoever.

23 If you find the defendant did make the statement,
24 and if you conclude these constitutional warnings were in
25 fact given to the defendant and that the defendant was

1 afforded an opportunity to exercise these constitutional
2 rights, you must next consider the third requirement. The
3 third requirement, did the defendant knowingly and
4 intelligently waive his constitutional rights. Before you
5 can consider the statement as evidence in the case the
6 State must prove beyond a reasonable doubt that the
7 defendant after being given his constitutional warnings
8 knowingly and intelligently waived his constitutional
9 rights and agreed to answer questions and make a
10 statement. Therefore, if you find the defendant did not
11 knowingly and intelligently waive his constitutional
12 rights then any answer given by him or any statement made
13 by him cannot be used against him and you must completely
14 disregard all of the testimony concerning any such answers
15 or alleged statement. If you find the defendant did make
16 the statement and if you conclude the constitutional
17 warnings were in fact given to the defendant and that the
18 defendant was afforded an opportunity to exercise these
19 rights, and if you further find the defendant after being
20 given his constitutional warnings knowingly and
21 intelligently waived his constitutional rights and agreed
22 to answer questions and make a statement, you must next
23 consider the fourth requirement. The fourth requirement,
24 was the statement given freely and voluntarily. The word
25 voluntarily means, the statement was expression of the

1 defendant's own free will and was not induced by pressure,
2 force, fear, or influence, hope or promise of some benefit
3 or reward or extracted by coercion or intimidation.
4 Voluntarily means intentionally, without coercion. A
5 statement is not freely and voluntarily given and may not
6 be used against a defendant unless it is the product of an
7 essentially free and unconstrained choice by its maker.
8 If the statement is freely and voluntarily given, if the
9 defendant has willed to make a statement, it may be used
10 against him. If the statement is not voluntary it cannot
11 be used against him. The true test to be applied is
12 whether such statement is freely, voluntarily, and
13 understandingly made without compulsion or inducement. In
14 determining whether the alleged statement of the defendant
15 was freely and voluntarily given you must consider all of
16 the facts and circumstances surrounding the taking or the
17 making of the statement, and you must consider all of the
18 evidence in the case in reaching an ultimate conclusion as
19 to the voluntary or involuntary character of any such
20 statement.

21 There is called in the law the totality of the
22 circumstances. In making a judgment under the totality of
23 the circumstances some of the factors that you should
24 consider are: One, the age and youth of the defendant;
25 two, the mental ability or capacity of the defendant;

1 three, his education or lack thereof; four, his IQ or
2 intelligence; five, his background and environment; six,
3 the advice, or lack thereof, to the defendant of his
4 constitutional rights including but not limited to the
5 procedural safeguards known as the Miranda warnings;
6 seven, the place and length of the detention; and eight,
7 the nature of the questioning. You, the jury, must
8 carefully scrutinize all of the surrounding circumstances
9 before you give any weight to any alleged statement. You
10 must be satisfied beyond a reasonable doubt that the
11 statement was made by the defendant freely and
12 voluntarily.

13 Homicide by child abuse. The defendant is charged
14 with the offense of homicide by child abuse. The General
15 Assembly of the State has passed a statute. It's law of
16 the state. It's contained in section 16-3-85 of the code
17 of laws. "A person is guilty of homicide by child abuse
18 if the person causes the death of a child under the age of
19 eleven while committing child abuse or neglect and the
20 death occurs under circumstances manifesting an extreme
21 indifference to human life." Let me repeat that again for
22 the sake of emphasis. Section 16-3-85, homicide by child
23 abuse. "A person is guilty of homicide by child abuse if
24 the person causes the death of a child under the age of
25 eleven while committing child abuse or neglect and the

1 death occurs under circumstances manifesting an extreme
2 indifference to human life." For purposes of this law the
3 following definitions apply: One, child abuse or neglect
4 mean an act or omission by any person which causes harm to
5 the child's physical health or welfare; two, harm to a
6 child's health or welfare occurs when a person inflicts or
7 allows to be inflicted upon the child physical injury
8 including injury sustained as a result of excessive
9 corporal punishment.

10 The constitution mandates unanimity in a jury
11 verdict. All twelve jurors must agree to the verdict,
12 whatever it is. Mr. Foreman, once again, I will send this
13 paper in to you. It has the caption of the case, what we
14 call in the law the caption, the name of the court, the
15 identification of the defendant. On the side it says,
16 verdict, has the indictment number. The first verdict
17 possibility is not guilty. If the jury unanimously, all
18 jurors agreeing, finds the defendant not guilty sign
19 number one. Or number two, guilty of homicide by child
20 abuse. If the jury unanimously, all jurors agreeing, all
21 jurors concurring, finds the defendant guilty of homicide
22 by child abuse sign number two. Once again, do not sign
23 any verdict form unless it is totally unanimous. No
24 division is allowed under any circumstances.

25 The twelve of you on the jury, I now present two

1 questions to you. One, is there anyone on the basic jury
2 not feeling well? If you're not feeling well raise your
3 right hand now. I've got two alternates here and they're
4 ready, willing to serve in your place. If you're not
5 feeling well raise your hand up.

6 (There was no response.)

7 THE COURT: Now, folk, tell me now. If you've got
8 a stomach ache tell me now. Once I send you into the jury
9 room it's too late to send me out a note. Anybody with
10 any physical discomfort, anyone not feeling well, please
11 tell me. Don't be bashful, don't be shy.

12 (There was no response.)

13 THE COURT: Anyone not feeling well?

14 (There was no response.)

15 THE COURT: Ms. Court reporter, let the record show
16 no response. Is there any person who anticipates any
17 problem staying with the case? It's 4:00 and obviously
18 over the past few years ago I've tried a number of cases
19 and I've had all kind of things occur where persons sent
20 me out a note, who's gonna pick up my children, who's
21 gonna tell my family member, what if you've got a problem,
22 like that. Tell me now. Folk, please tell me. I beg you
23 to tell me now. I'm just giving you the opportunity.
24 I've got two alternates who are ready, willing to serve.
25 Anyone with a problem?

1 (There was no response.)

2 THE COURT: Anyone with a problem?

3 (There was no response.)

4 THE COURT: For the third and last time, anyone
5 with a problem?

6 (There was no response.)

7 THE COURT: All right, Ms. Court Reporter, let the
8 record show that I've again given the jury the chance to
9 respond and there is no response.

10 You two alternates wait right there. I'll give you
11 some good news.

12 You jurors, as you go to your jury room do not begin
13 talking. Do not begin discussing the case. Do not talk
14 about the facts. I'm required to let these lawyers object
15 to anything I've said to you, and I must let them object
16 in your absence. It might be that I bring you back out.
17 If I don't bring you back out, as soon as you see all the
18 exhibits and the verdict form start talking. Now
19 Mr. Foreman and members of the jury, there's one final
20 thing I'll tell you. As I mentioned it's 4:00. If you
21 deliberate a while and you think you need some food
22 brought in we will do so at county expense. County will
23 pay for your food. If you tell me at 6, it will be 7
24 before we get it here. The restaurant that we deal with
25 in Florence has hour lag time. So if you tell me 7 it

1 will be 8, so understand. And Mr. Foreman, you are the
2 spokesperson on behalf of the jury. And you and I must
3 communicate in writing so if something comes up or
4 anything you want to know on behalf of the jury or the
5 jury wants anything, send me a note out, we'll give you a
6 pad, we should have a pad somewhere. We'll get you a pad.
7 Please go to your jury room, the twelve, and wait for
8 further instructions.

9 (WHEREUPON, the jury was removed from the
10 courtroom at 4:00 p.m., and the alternates were excused.)

11 THE COURT: Exceptions from the State?

12 MR. JEPERTINGER: No exceptions, Your Honor.

13 THE COURT: Exceptions from the Defense?

14 MS. WINGARD: No additional ones, just would ask
15 that the Edwards circumstantial evidence exception be
16 continuing.

17 THE COURT: I want to make this statement about
18 Edwards. When I was on the Court of Appeals I loved
19 Edwards and I used Edwards on numerous occasions, over 17
20 years trying cases and not stopping before Friday every
21 week. I used Edwards in a plenitudinous circumstances.
22 And when I sat on Court of Appeals we finally came up with
23 the en banc of Cherry so all nine sat together on en banc
24 consideration of Cherry. And when we finished with Cherry
25 we had five different opinions in regard to Cherry. The

1 record will show that Anderson penned a little short
2 opinion, succinct opinion, and discussed Edwards and why I
3 thought Edwards was such a great charge. The Supreme
4 Court in all of its majesty, in all of its power, in all
5 of its academic expertise decided that Edwards should not
6 be the law so they penned State versus Cherry. And I
7 assume that when they penned State versus Cherry they
8 meant what they said when they said that Grippon
9 supplanted Edwards. Just wanted to put that on the record
10 in terms of my former life. Anything else?

11 MS. WINGARD: Mr. Bell just opined he thought your
12 heart was with us.

13 THE COURT: Come forward and check the evidence.
14 Ms. Bailiff, here is the verdict form.

15 (Court was in recess while the jury began its
16 deliberations at 4:07 p.m.)

17 THE COURT: I'm informed that a verdict has been
18 reached. I have no earthly idea what the verdict is. We
19 are going to respect the jury verdict. That's the
20 constitutional rule in this state. I am not going to
21 allow any reaction to the jury verdict. I repeat again, I
22 am not going to allow any reaction to the jury verdict.
23 If you react to the jury verdict I'm going to take action
24 and sentence you for contempt of court and I'm giving you
25 warning now that will be done. We're not going to have

1 any outbursts or any kind of response. Often times I am
2 not able to communicate my message to listeners. It may
3 be that my statements are ambivalent, contain
4 vacillations, or equivocations. So I will give you the
5 opportunity now. Just like you were in church slide your
6 hand up if you have not understood the message. Slide
7 your hand right up because I repeat, again, folk, if you
8 react I'm not going to have it. It's just that simple.
9 Makes no sense. The jury is entitled to decide this case.
10 I don't decide it; the lawyers don't decide it. Bless be
11 the system.

12 (There was no response.)

13 THE COURT: All right. Deputies, if there's any
14 reaction – I intend to have decorum in the courtroom, and
15 I don't care who it is.

16 THE DEPUTY: Yes, sir.

17 (WHEREUPON, the jury was returned to the courtroom
18 at approximately 6:19 p.m., and the following proceedings
19 commenced in open court.)

20 THE COURT: Ms. Clerk, you're recognized.

21 DEPUTY CLERK OF COURT: Members of the jury, have
22 you agreed upon a verdict?

23 THE FOREMAN: We have.

24 (Document tendered to Court.)

25 THE COURT: Publish it.

1 **THE DEPUTY CLERK OF COURT:** State of South Carolina
2 versus Jermaine Mayweather, indictment number
3 2009-GS-21-1048, guilty of homicide by child abuse, signed
4 Eugene Truluck, dated September 23rd, 2009. Members of
5 the jury, if that is your verdict please raise your right
6 hand.

7 (All jurors complied by raising their hand.)

8 **DEPUTY CLERK OF COURT:** That's all of them, Judge.

9 **THE COURT:** Let the record show that the polling
10 procedure reveals unanimity in the jury verdict. Any
11 further requests for polling by the Defendant?

12 **MS. WINGARD:** I would request individual polling.

13 **THE COURT:** That is granted.

14 Ms. Clerk, explain the process to the jurors and
15 then proceed to complete the qualification process.

16 **DEPUTY CLERK OF COURT:** Members of the jury, I'm
17 going to ask you two questions. Please respond to both of
18 my questions.

19 Lisa Brown, is that your verdict then?

20 **JUROR BROWN:** Yes.

21 **DEPUTY CLERK OF COURT:** Is it still your verdict
22 now?

23 **THE JUROR:** Yes.

24 **THE DEPUTY CLERK OF COURT:** Steven Hibler.

25 **JUROR HIBLER:** Yes.

1 DEPUTY CLERK OF COURT: Is that your verdict then?
2 JUROR HIBLER: Yes.
3 DEPUTY CLERK OF COURT: Is it still your verdict
4 now?
5 JUROR HIBLER: Yes.
6 THE DEPUTY CLERK OF COURT: Karen Gordon, is that
7 your verdict then?
8 JUROR GORDON: Yes.
9 THE DEPUTY CLERK OF COURT: Is it still your
10 verdict now?
11 JUROR GORDON: Yes.
12 THE DEPUTY CLERK OF COURT: David Curry.
13 JUROR CURRY: Yeah.
14 THE DEPUTY CLERK OF COURT: Is that your verdict
15 then?
16 JUROR CURRY: Yes.
17 THE DEPUTY CLERK OF COURT: Is it still your
18 verdict now?
19 JUROR CURRY: Yes.
20 THE DEPUTY CLERK OF COURT: Walter Brown, is that
21 your verdict then?
22 JUROR BROWN: Yes.
23 DEPUTY CLERK OF COURT: Is it still your verdict
24 now?
25 JUROR BROWN: Yes.

1 THE DEPUTY CLERK OF COURT: Sandra Jones.
2 JUROR JONES: Yes.
3 DEPUTY CLERK OF COURT: Is this your verdict then?
4 JUROR JONES: Yes.
5 DEPUTY CLERK OF COURT: Is it still your verdict
6 now?
7 JUROR JONES: Yes.
8 THE DEPUTY CLERK OF COURT: Hannah Gurley.
9 JUROR GURLEY: Yes.
10 DEPUTY CLERK OF COURT: Is that your verdict then?
11 JUROR GURLEY: Yes.
12 DEPUTY CLERK OF COURT: Is it still your verdict
13 now?
14 JUROR GURLEY: Yes.
15 DEPUTY CLERK OF COURT: Carlisle Taylor.
16 JUROR TAYLOR: Yes.
17 DEPUTY CLERK OF COURT: Is that your verdict then?
18 JUROR TAYLOR: Yes.
19 DEPUTY CLERK OF COURT: Is it still your verdict
20 now?
21 JUROR TAYLOR: Yes.
22 THE DEPUTY CLERK OF COURT: Wanda Creel. Is that
23 your verdict then?
24 JUROR CREEL: Yes.
25 THE DEPUTY CLERK OF COURT: Is it still your

1 verdict now?

2 JUROR CREEL: Yes.

3 THE DEPUTY CLERK OF COURT: Teresa Mitchell, is
4 this your verdict then?

5 JUROR MITCHELL: Yes.

6 DEPUTY CLERK OF COURT: Is it still your verdict
7 now?

8 JUROR MITCHELL: Yes.

9 THE DEPUTY CLERK OF COURT: Eugene Truluck, is that
10 your verdict then?

11 JUROR TRULUCK: Yes.

12 THE DEPUTY CLERK OF COURT: Is it still your
13 verdict now?

14 JUROR TRULUCK: Yes.

15 THE DEPUTY CLERK OF COURT: Amanda Brotherton, is
16 that your verdict then?

17 JUROR BROTHERTON: Yes.

18 THE DEPUTY CLERK OF COURT: Is it still your
19 verdict now?

20 JUROR BROTHERTON: Yes.

21 THE COURT: Let the record show that the individual
22 polling procedure reveals unanimity in the jury verdict.
23 Jurors, thank you very much for serving on this case.
24 Thank you for the time and talent you brought to this
25 task. Thank you for resolving this case. I appreciate

1 that. Your time and talent is very important to the
2 Court, and I thank you for participating this week. We're
3 going to release you now for the week. We have now
4 completed the jury trials and we're doing other matters in
5 regard to cases but no further jury trials so you are
6 released for the week and I thank you for serving. I
7 appreciate your service. You have a wonderful week and
8 you're free to go. Come right through here. And catch
9 them the elevator.

10 (WHEREUPON, the jury was removed from the
11 courtroom at 6:23 p.m., and the following proceedings
12 commenced in open court.)

13 THE COURT: Motions by Defense?

14 MS. WINGARD: Judge, at this time we move for a new
15 trial on those matters appearing in the record.

16 THE COURT: Let the record show that all of those
17 prior objections and all of those prior legal matters that
18 have been presented to the Court are hereby incorporated
19 into the motion for new trial. The motion for new trial
20 is respectfully denied.

21 Bring him forward for sentencing please.

22 MR. JEPERTINGER: Your Honor, I did not know if you
23 wanted to hear from the family, Judge.

24 THE COURT: Yes, I do.

25 MR. JEPERTINGER: There is obviously Ms. Williams

1 who testify during the course of the trial. There's also
2 the natural father of Child That is Jerrell Pickett.
3 I don't know if he wants to say something for his son.

4 THE COURT: Bring them forward if they would like
5 to say something.

6 All right, present them, Mr. Solicitor.

7 MR. JEPERTINGER: This is Debra Williams, and I
8 would ask if she'd like to say anything in terms of
9 sentencing in terms of what she feels, Your Honor.

10 THE COURT: Okay.

11 MOTHER OF THE VICTIM: Debra. I feel that he
12 should spend his life in jail. That's how I feel because
13 my son can't come back. I will not be able to look at my
14 baby further than a picture, but your family can look at
15 you.

16 MR. JEPERTINGER: Please address your comments to
17 the Court please.

18 MOTHER OF THE VICTIM: They can look at him. They
19 can go visit him. They can even touch him. I can't touch
20 mine. I cannot. And it's devastating that on my son
21 birthday I have to watch my three kids say happy birthday
22 to him at his grave, and I should have not had to endure
23 that. I really shouldn't. And that's all I can say.

24 THE COURT: All right.

25 MR. JEPERTINGER: Mr. Pickett. State your full

1 name please.

2 THE COURT: All right.

3 FATHER OF THE VICTIM: Jerrell Pickett. I pray
4 every night since this has happened and I pray for justice
5 and that what I got and I thank God for it and I thank the
6 jury for that. And that's about all I can say. I thank
7 everybody for their part, the attorneys, I appreciate it.

8 THE COURT: All right. Thank you. Okay.

9 MR. JEPERTINGER: Your Honor, and the only sort of
10 record I think he may have had would have been a juvenile
11 record. Obviously note that that's referred to the
12 redacted portion of the transcript that we went through,
13 Your Honor, but obviously based on his age there's really
14 no criminal record, Your Honor.

15 THE COURT: All right. Counsel.

16 MS. WINGARD: Judge, I would ask you to please be
17 lenient on him. I understand that there is a mandatory
18 minimum 20 years. I was not lieing when I said in my
19 closing argument this case has impacted more than any case
20 I have ever handled. He was 15 years old when this
21 happened. He was left in an impossible situation, Without
22 a phone, without any way to communicate, with these two
23 little boys and it's tragic that one of them is gone. But
24 you know, this is not a kid who was in the street with a
25 gun. This is a kid who was left at home with these two

1 little boys and something happened. It's always so
2 difficult to argue for mitigation after an adverse jury
3 verdict because you've heard his statement. But you know,
4 he was only 15; he's only 16 now. Never any history of
5 violence, never any reason to suspect that he had a
6 violent nature. He was just going into the ninth grade.
7 And Judge, I know that you are aware of the way the
8 adolescent brain develops, and it doesn't develop in the
9 same way that adult brains are finally developed. I would
10 ask you to hear from any member of his family, but you
11 know, you heard what I said in closing argument and I
12 meant it. I think this young man was just put in a
13 terrible position.

14 You know, he has been out on bond. He's been living
15 with a great aunt, and he has reported as you required him
16 to do. He would come to our office. We've never had any
17 trouble with him, not a bit of trouble. He has always
18 been polite and respectful to me and the members of the
19 staff. I think that he probably had some difficult life
20 lessons from the family that I know, but this young man
21 doesn't deserve to be in jail for the rest of his life.
22 He really doesn't. And Judge, I think that there is
23 significant movement that says that a juvenile should
24 never be sentenced to jail for life, and I would make that
25 argument that it is cruel and unusual punishment to

1 sentence a juvenile to jail for life. I know you have to
2 give him 20 years, but I would ask you to be merciful in
3 that regard.

4 THE COURT: All right. Anyone else want to address
5 the Court?

6 MS. WINGARD: Judge, I would tell you that this is
7 his mother Patricia Mayweathers. She lives in Virginia.
8 This is his father Willie Gerido, and this is his
9 grandmother Dianne Gerido. Obviously they are overwhelmed
10 with emotion at this point.

11 THE COURT: Mr. Mayweathers, would you like to say
12 anything to the Court?

13 THE DEFENDANT: No, sir.

14 THE COURT: The jury has spoken. The jury has
15 found the defendant guilty of this brutal crime. The
16 medical testimony reveals a horrific injurious act
17 inflicted upon this little 5 year old. And from the
18 standpoint of sentencing, after 30 years on the Bench I
19 come to a circumstance like this, and I hear from various
20 parties occupying various positions, but the strange
21 circumstance that is so compelling is that the 5 year old
22 is not able to speak. And no one, no one, no one in this
23 room can speak for the 5 year old. Because I can make
24 statements in regard to sentencing, they do have religious
25 overtones. Thankful is the word that I use from my heart

1 in that this 5 year old occupies the position of an angel
2 in heaven, and on behalf of this angel I pass the sentence
3 today. The defendant is committed to the State Department
4 of Corrections for a term of 30 years. Court is
5 adjourned.

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7 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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CERTIFICATE OF REPORTER

**STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }**

**I, FRANCES BAKIS-RAY, Registered Professional
Reporter (RPR), court reporter for the State of South
Carolina, Twelfth Judicial Circuit, do hereby certify that
the foregoing proceeding is a stenographic report and was
transcribed through computer-aided transcription; that the
foregoing transcript contains a true record of the
proceedings.**

**I further certify that I am neither counsel for,
nor related to nor employed by any of the parties
connected to the action, nor am I financially interested
in the action.**

**Witness my hand at Florence, South Carolina,
this 11th day of February, 2010.**


**FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014**

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Ralph King Anderson, Jr., Special Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERMAINE MAYWEATHERS,

APPELLANT

FINAL BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT.

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION	10

TABLE OF AUTHORITIES

Cases

<u>In Re Arisha H.S.</u> , 331 S.C. 288, 501 S.E.2d 128 (1998)	7
<u>In Re Corey D.</u> , 339 S.C. 107, 529 S.E.2d 20 (2000)	8
<u>In Re Shaun</u> , 274 S.C. 534, 265 S.E.2d 522 (1980)	9
<u>Kent v. United States</u> , 383 U.S. 541 (1966).....	7
<u>State v. Avery</u> , 374 S.C. 24, 649 S.E.2d 102 (2008).....	9
<u>State v. Corey D.</u> , 339 S.C. 107, 529 S.E.2d 20 (2000)	8, 10
<u>State v. Miller</u> , 363 S.C. 635, 611 S.E.2d 309 (2006).....	8

Constitutional Provisions

U.S. Const. Amend. XIV	10

STATEMENT OF ISSUE ON APPEAL

The Family Court judge erred in transferring appellant's case to General Sessions Court because although the crime charged against appellant (homicide by child abuse) involved a serious offense against another person; nonetheless, appellant had no prior serious criminal record, and he was an excellent rehabilitation candidate who was no threat to the public.

STATEMENT OF THE CASE

On July 30, 2008, a juvenile petition was filed in the Florence County Family Court charging appellant with homicide by child abuse. On March 18–19, 2009, a transfer/waiver hearing was held at the Florence County Family Court before the Honorable Jerry D. Vinson, Jr., Judge, after which time appellant's case was transferred to the Court of General Sessions.

Appellant was tried by jury during the September 2009 term of the Florence County General Sessions Court before the Honorable Ralph King Anderson, Jr., Judge. Appellant was found guilty of homicide by child abuse. Judge Anderson sentenced appellant to imprisonment for a period of thirty years.

Appellant appealed. This brief follows.

ARGUMENT

The Family Court judge erred in transferring appellant's case to General Sessions Court because although the crime charged involved a serious offense against another person, nonetheless, appellant had not prior serious criminal record, and he was an excellent rehabilitation candidate who was not found to be a threat to the public protection.

The deceased in this case was a five-year old child who died of head trauma on July 25, 2008. Debra Williams, who was the mother of the deceased child, stated that shortly before 8:00 a.m. on July 25, 2008, she left her five-year-old and eight-year-old sons at her home in the care of her fiancé's son, i.e., appellant, who was aged fifteen years at that time. Williams testified that when she returned home on that same day, appellant told her that the five-year old child was at the hospital. Williams stated that appellant explained that the five-year-old and eight-year-old were fighting and that he had to separate them. R. p. 365, line 16 – p. 384, line 8. The eight-year-old child testified that appellant beat the five-year-old child with a belt. Doctors Gerald F. Atwood and Susan Erin Presnell testified that the child's cause of death was severe head injury. R. p. 541, lines 10 – 24. R. p. 588, lines 9 – 23. Appellant gave a statement indicating that he was in charge of the children on that day. Appellant did not state that he beat the five-year old child. R. p. 229, line 9 – p. 230, line 13. Appellant did not testify at the hearing or at trial.

During the transfer hearing, clinical psychologist Dr. Heffler testified regarding the results of his evaluation of appellant. Dr. Heffler stated that appellant's intelligence, memory, and vocal skills were appropriate and average for his age which was fifteen years and six months at the time of testing. Dr. Heffler stated that appellant was a bright individual who made decent grades and mixed well with his peers and family. R. p. 189,

line 10 – p. 194, line 2. Also, Dr. Heffler found no signs of emotional disorders such as anxiety or depression, and he did not exhibit the tendencies of people who would commit murder. R. p. 194, line 12 – p. 196, line 12. Dr. Heffler's summary of appellant follows:

He's an intelligent young man who can express himself well, process information, knows right from wrong. It's unlikely that he would be led into some big major crime by peers that were going to do something. He would now what's right, what to do, what not to do.

He's most likely to get along well family and friends and be successful at school and be able to get a job, work, be a productive member of society. No unusual things noted at all.

R. p. 196, line 25 – p. 197, line 9.

During the tests... - he was able to sustain his attention and his motivation. He would adapt to the situations. He acted in a mature way...

So we would - - again, I would assume that he could benefit from intervention programs that were designed to help people who commit serious problems.

Third factor, he was fifteen (15) years old. Therefore he had a considerable period of time for rehabilitative efforts in the juvenile justice system...

Lastly, if he could - - if in fact he were guilty, if he could help - - if he could be helped to make better decisions, rather than be influenced by others, he's got lots of adequate time, adequate ability to benefit from that and apply that in his life and make better decisions in the future.

R. p. 199, line 10 – p. 200, line 11.

In addition, Dr. Heffler testified that DJJ had a better rehabilitation program than the youthful offender program in the adult prison, and that appellant would benefit more from

intervention at DJJ. R. p. 200, line 23–p. 201, line 15; R. p. 203, lines 5–21; R. p. 201, line 25 – p. 202, line 9.

Ms. Nancy Lee Ingram testified that appellant lived with her after he was charged with the offense, and that he stayed in her home for three months. Ingram had no problems with appellant during that time.

The United States Supreme Court requires juveniles to receive proceedings consistent with due process and constitutional safeguards in waiver hearings. See In Re Arisha H.S., 331 S.C. 288, 501 S.E.2d 128 (1998) citing the case of Kent v. United States, 383 U.S. 541 (1966), where the court established the criteria necessary to decide whether a defendant's case should be waived up from family court to adult court. The Kent factors are as follows:

- I. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if injury resulted.
4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a grand jury may be expected to return an indictment
5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime
6. The sophistication and maturity of the juvenile as determined by consideration of his home,

environmental situation, emotional attitude and pattern of living.

7. The record and previous [criminal or adjudicative] history of the juvenile
8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.

In the case at bar, the state in effect alleged that appellant beat the five-year old child to the point where severe head injury resulted. The crime charged was serious, and the crime was perpetrated upon a person. However, the “heinousness” of the murder is a factor to be considered at a waiver hearing. See In Re Corey D., 339 S.C. 107, 529 S.E.2d 20 (2000). In the instant case, the facts in the record established that appellant’s alleged behavior was not premeditated or willful or heinous. For example, there no weapon used by appellant. Also, it certainly appeared as though the fifteen-year old appellant, who was a child also, may have snapped under the pressure of having to baby-sit two small children, one (deceased) of whom the mother admitted was rambunctious. Compare the waiver case of State v. Corey D., 339 S.C. 107, 529 S.E.2d 20 (2000), where the deaths were premeditated and both murdered victims were sexually assaulted before the murders were committed. The waiver case of State v. Miller, 363 S.C. 635, 611 S.E.2d 309 (2006), involved a juvenile who used two separate guns to shoot his father nine times, and then tried to conceal the crime by hiding the dead body and cleaning up the blood. Furthermore, the juvenile in the Miller case lied about being sexual abused by his father. The case of State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2008), involved a juvenile who loaded a shotgun and shot his two grandparents to death, and then positioned candles in the house in such a

way that the house would catch fire after heeled. See State v. Avery, 374 S.C. 24, 649 S.E.2d 102 (2008) and In Re Shaun, 274 S.C. 534, 265 S.E.2d 522 (1980). Therefore, comparatively speaking, clearly appellant was weaponless and just snapped under pressure, which in turn places appellant's case in the category of a case that did not rise to the level of an offense that was committed in a willful, premeditated, or heinous manner. Also, Dr Heffler was certain that the rehabilitation program at DJJ was a better program than the YOP program offered in the adult prison. This meant that if appellant was recommended and managed to remain at DJJ until he were 21 years old and not transferred at from DJJ at age 17, then he would receive at least four years of a better rehabilitative program at DJJ. R. p. 203, lines 1 – 10; R., p. 204, line 19 – p.205; R. p. 206, lines 3 – 23.

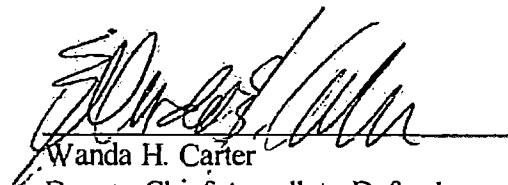
In addition, although an indictment would probably have been returned by the grand jury on the crime charged in the juvenile petition; note, however, that the case was merely circumstantial in nature and there was no overwhelming evidence of appellant's guilt on the offense charged. For example, the state's case consisted of two pieces of evidence: appellant's presence in the home with the five-year old child on the day the child was injured and the medical finding that said child died of severe head injury. There was no forensic evidence linking appellant to the crime charged and no confession was made by appellant. Interestingly enough, there was evidence that the child's mother engaged in corporal punishment of the five-year old child a day or two before the day on which the child died, and that the child had a huge knot/bump on his head on the day before he died. Furthermore, note that appellant had no major criminal record save a few minor infractions in his record. Moreover, appellant was mature, intelligent, capable of being rehabilitated and deemed to be no public threat.

Transfer orders are affirmed or reversed per an abuse of discretion by the Family Court judge. A Family Court judge may abuse his discretion in a transfer order if the decision to transfer the case is without reasonable factual support. State v. Corey D., 339 S.C. 107, 529 S.E.2d 20 (2000). Here, the Family Court judge erred and abused its discretion in transferring appellant's case to General Sessions Court because although the crime charged involved a serious offense against another person; nonetheless, appellant had no prior serious criminal record and was an excellent rehabilitation candidate who was no threat to the public. The family court's waiver error violated appellant's Due Process rights under the Fourteenth Amendment Due.

CONCLUSION

Based on the foregoing argument, appellant requests that the Family Court waiver be reversed and General Sessions Court conviction vacated in order for a retrial to be held in Family Court.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

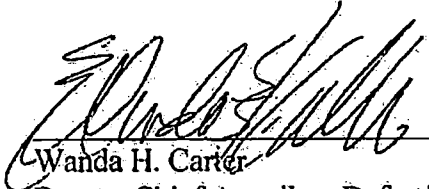
ATTORNEY FOR APPELLANT.

This 30th day of December, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 21 l(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 30th, 2010


Wanda H. Carter
Deputy Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Ralph King Anderson, Jr., Special Circuit Court Judge

THE STATE,

RESPONDENT,

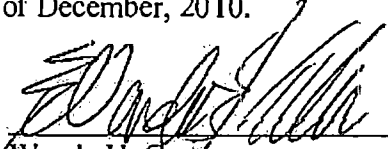
V.

JERMAINE MAYWEATHERS,

APPELLANT

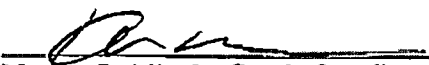
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, Assistant Deputy Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 30th day of December, 2010.


 Wanda H. Carter
 Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
 this 30th day of December, 2010.

 (L.S.)
 Notary Public for South Carolina
 My Commission Expires: October 2, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Florence County
Ralph King Anderson, Jr., Special Circuit Court Judge

THE STATE,

Respondent,

vs.

JERMAINE D. MAYWEATHERS,

Appellant.

FINAL BRIEF OF RESPONDENT

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DAVID SPENCER
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

E. L. CLEMENTS, III
Solicitor, Twelfth Judicial Circuit

City-County Complex
180 N. Irby St., MSC-Q
Florence, SC 29501
(843) 665-3091

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
ISSUE ON APPEAL	i
STATEMENT OF THE CASE	i
STATEMENT OF THE FACTS	2
ARGUMENT, ...	9
The Family Court did not err in transferring appellant's case to General Sessions Court.	9
CONCLUSION	17

TABLE OF AUTHORITIES

Cases:

<u>Kent v. United States</u> , 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966)	11, 12, 16
<u>Sanders v. State</u> , 281 S.C. 53, 314 S.E.2d 319 (1984)	16
<u>State v. Avery</u> , 333 S.C. 284, 509 S.E.2d 476 (1998)	9
<u>State v. Kelsey</u> , 331 S.C. 50, 502 S.E.2d 63 (1998)	11, 12, 16
<u>State v. Lamb</u> , 374 S.C. 346, 649 S.E.2d 486 (2007)	9
<u>State v. Miller</u> , 363 S.C. 635, 611 S.E.2d 309 (Ct. App. 2005)	16
<u>State v. Pittman</u> , 373 S.C. 527, 647 S.E.2d 144 (2007)	9, 16

Other Authorities:

S.C. Code § 63-19-1210(5)	9
S.C. Code § 20-7-7605	9

STATEMENT OF ISSUE ON APPEAL

The Family Court did not err in transferring appellant's case to General Sessions Court.

STATEMENT OF THE CASE

For purposes of this Brief, Respondent agrees that Appellant's Statement of the Case is substantially correct.

STATEMENT OF FACTS

The five year old victim died from head trauma, which despite the hospital's best efforts, caused his brain to swell until he became brain dead. He had been left in the care of Appellant, fifteen years old at the time of the homicide. Appellant had called 911 prior to Victim's mother arriving home from work on July 25, 2008 – Victim was already at the Hospital.

A hearing was held to determine if transfer to General Sessions was warranted. Deborah Williams (Mother) testified that Appellant and his father, William, were living with her and her two sons, Victim and seven year old K.P., Victim's brother. Appellant moved down to Virginia because of the problems he was having there. His mother could not handle him and she was constantly calling William to come get his son. Family Court Transcript (ROA.) pp. 74-75;p. 89; pp. 91-92. Victim was fine the night before and on the morning of July 25th, when Mother peeked into his room before leaving for work. ROA. p. 82. On the night before, Victim ran up to Mother when she arrived home at 5p.m., and Mother noticed a bump on his head. Mother asked about the bump, but before Victim could reply, Appellant said, "Well we were in there playing to [sic] rough, and he hit his head on the bunk bed." ROA. p. 83, lines 2-23. Victim said his head did not hurt, but Mother watched him, and kept him up until 2 a.m. Victim was fine and playing with his brother. ROA. p. 84.

The next day, Mother arrived home after 5 p.m. and Appellant said Victim was at the hospital. Mother, Victim, and K.P. went in Mother's car to the hospital. She asked Appellant what happened. Appellant claimed K.P. and Victim were fighting and

Appellant separated them. Mother said, "That's it?". "Yeah". This was the only explanation Appellant ever gave Mother. ROA. pp. 84-87. Mother testified that K.P. denied fighting. Specifically he said, "No, I wasn't the one fighting Child ." ROA. p. 87, lines 14-19.

Dr. Susan Presnell testified as an expert in forensic pathology. The cause of Victim's death was blunt force trauma to head. There was also blunt force trauma to the chest, buttocks, and legs. Dr. Presnell noted whip-type injuries, or tram tracking, which were injuries typically made by a whip or belt. This resulted from the whip-like object causing compression and red blood cells to squish out either side, resulting in hemorrhage on either side of the item making the mark. Dr. Presnell testified she would expect these injuries to have caused Victim a lot of pain. Victim survived in the hospital until dying the next day. ROA. pp. 133-139.

On the body, there were avulsions, where the skin had pulled away. In addition to the blunt force trauma to the head, there were other superficial injuries to the head. There were injuries to the mouth. The blunt force injuries to the head caused brain swelling. Victim underwent a craniotomy at the hospital, in which a big oval piece of bone was taken out of the right side of the head, hoping to alleviate the pressure from Victim's brain as it swelled. Subdural blood was also removed from Victim. But Victim did not improve. He continued to have massive brain swelling and he was pronounced brain dead. ROA. pp. 141-152. Although the blunt force trauma was ruled the cause of death, Victim also suffered an extensive soft tissue hemorrhage – massive bleeding into the soft tissues. ROA. p. 158, line 21 - p. 159, line 9. Soft tissue hemorrhages could potentially cause death in children.

Dr. Presnell testified as follows:

He had, definitely extensive soft tissue hemorrhage. Whether that caused some low blood pressure and may have contributed to – to some of the, you know his – his poor condition, we thought it was significant enough to include it in the cause of death statement.

ROA. p. 159, lines 10-15.

Dr. Presnell testified that most simple falls will not result in fatality. Occasionally, they can, such as by an epidural hemorrhage – which Victim did not have. Another way is to fall down and get a subdural hematoma—most often occurring to elderly or alcoholics due to atrophy in the brains and thus more space in the skull. In the instant case, Victim had a subdural hemorrhage on the right and left sides of the brain and across the base of the brain, with “just massive, massive swelling of the entire brain.” ROA. pp. 157-158. Dr. Presnell testified: “This is not consistent with a simple fall or a localized trauma to cause – to cause the amount of injury that he had in his head.” ROA. p. 158, lines 12-14.

Dr. Presnell testified that the Victim would not have suffered the fatal brain injury “and then be functional prior to him then being found unconscious or unresponsive.” Instead, Victim would have “definitely been symptomatic after the fatal brain injury.” ROA. p. 159, line 22 - p. 160, line 20.

Dr. Atwood testified as an expert witness in the areas of pediatrics, critical care, and child abuse. ROA. p. 257. Dr. Atwood testified that given the severity of the head injury he thought it “impossible that this child did not have a significant change in his level of neurological function, consciousness, or whatever ” and that “there was a significant change in this child immediately after this injury occurred.” ROA. p. 265, lines 12-25. Dr. Atwood

testified that a child would not be able to "sustain this injury, be normal, and then all of a sudden drop out." ROA. p. 266, line 10 - p. 267, line 2. His opinion was the trauma came from at least two blows to the head. ROA. p. 273, lines 6-21.

K.P. , Victim's seven year old brother, witnessed Victim's demise.

K.P. had a difficult time testifying, the Family Court noting, when it ruled, that: "A seven year old has great difficulty in presenting evidence the way that an adult would; and I wouldn't expect him to be able to do so." ROA. p. 337, lines 9-17. However, K.P. was firm in his testimony that Appellant beat Victim. He testified that Appellant put Victim in the bedroom and beat him with a belt. Appellant also bumped Victim into the wall. Victim was throwing up. K.P. was asking Victim to wake up, but Victim could not do anything. ROA. pp. 21-25.

On cross-examination, Appellant's attorney tried unsuccessfully to talk K.P. into recanting his testimony as follows:

Q: You called him Jermaine. But did you think of him as your step-brother or your friend or – How did you think of Jermaine?

A: My step-brother.

Q: Your step-brother? And let me – let me understand what you're telling idn't hear – You didn't see Jermaine do anything to Child , is that right?

A: No. Yes.

Q: Okay. You didn't see him do anything to him?

A: Yes. I see.

Q: All right. What did – What did you see?

A: He beat him.

ROA. p. 35, line 16 - p. 36, line 3. From the Court's examination of K.P. it appears Appellant hit Victim ten times with the belt and spun Victim around into the bunk bed, and that Victim's head also hit the wall. ROA. pp. 56-60.

Investigator Rene Lowder from the Florence County Sheriff's Office also testified. His investigation began when he went to the Emergency Room. He noted that K.P. seemed scared and did not talk much. Appellant sat in the lobby with a coat or sheet over his head. His investigation determined that Mother was at work and that Appellant's father was not at the residence at the time of the incident. Investigator Lowder took a statement from Appellant. Appellant indicated that Victim was fine up until 4 p.m. on the 25th. ROA. pp. 209-215; pp. 226-227.

Dr. Joel Heffler, a DJJ psychologist, saw Appellant on four occasions. ROA. p. 188. Appellant was tested and found to be in the average range of the intelligence scale test. Dr. Heffler found that Appellant was intelligent and could express the difference between right and wrong. Appellant knew the expectations of the typical teenager. Appellant had all the capabilities a typical teenager would have. ROA. pp. 191-196. Dr. Heffler testified as follows on the results of his testing:

He's an intelligent young man who can express himself well, process information, knows right from wrong. It's unlikely that he would be led into some big major crime by peers that were going to do something. He would know what's right, what to do, what not to do.

He's most likely to get along well [with] family and friends and be successful at school and be able to get a job, work, be a productive member of society. No - No unusual things noted at all.

ROA. p. 197, lines 6-9.

However, Dr. Heffler noted the negative factors as follows:

The negative factors, which would indicate difficulty with rehabilitation kinds of factors, is that he was charged with a very serious offense that involved the death of an individual. And if in fact he were guilty of such an offense, that would be a negative factor in terms of rehabilitation. The more serious the crime, the lower the likelihood. It's certainly not a – a guarantee either way, but statistically speaking.

Secondly, he had a history of minor infractions. And persons with that pattern, if they are steadily increasing over, getting worse and worse and worse, that would be a negative indicator if in fact he were guilty. But he continuously maintained that he was innocent. That's often a negative predictor as compared to the person who would admit guilt and accept responsibility.

And lastly the – his family indicated that at times he was influenced by other people. . . . [O]f course, that is a negative factor. And if you're exposed to a lot of negative people, certainly like in a prison situation, then this person likely would be able to be influenced by certain people.

ROA. p. 198, lines 2-25.

Dr. Heffler noted that if convicted, Appellant would be in DJJ only until he was seventeen years old, and then be moved to the adult corrections system where he would be eligible, but not necessarily be admitted, into the youth offender program. ROA. pp. 201-202.

Andrea Foster, the intake supervisor at DJJ testified that Appellant would be at DJJ for about a year if adjudicated delinquent and then transferred to the adult population at SCDC. ROA. p. 308. She testified that he would serve between thirty-six and fifty-four months if adjudicated delinquent. ROA. pp. 311-312.

Nancy Lee Ingram, Appellant's great-aunt testified. Based on her testimony,

Appellant came to live with her in December and managed to not get in trouble for the approximately three months he lived at her residence. ROA. pp. 316-319.

ARGUMENT

The Family Court did not err in transferring appellant's case to General Sessions Court.

Appellant argues that the Family Court erred in transferring the case to General Sessions.¹ In doing so, the Appellant appears to be asking this Court to substitute its judgment for the Family Court's. "The appellate court will affirm a transfer order unless the family court has abused its discretion." State v. Avery, 333 S.C. 284, 292, 509 S.E.2d 476, 481 (1998). "The serious nature of the offense is a major factor in the transfer decision." Id. "The best interests of the public or of the juvenile may requires the juvenile be held accountable as an adult for his criminal conduct." Id., 333 S.C. at 293, 509 S.E.2d at 481. Jurisdiction of family court over juveniles is a privilege rather than a matter of right. State v. Lamb, 374 S.C. 346, 350, 649 S.E.2d 486, 488 (2007).

In order for an appellate court to reverse the family court's determination, the court would have to find the family court's order wholly unsupported by the record to find error. State v. Pittman, 373 S.C. 527, 560, 647 S.E.2d 144, 161 (2007) ("Because we review the lower court's decision only for an abuse of discretion, this Court would have to find the family court's order wholly unsupported by the record in this regard to find error"). In the instant case, abundant evidence in the record supports the Family Court's findings.

Appellant argues that "the facts in the record established that appellant's alleged behavior was not premeditated or willful or heinous. . . . Also, it certainly appeared as though the fifteen-year old appellant, who was a child also, may have snapped under the pressure of

¹ Transfer was made pursuant to S.C. Code § 63-19-1210(5) (Supp. 2009), formerly S.C. Code § 20-7-7605.

having to baby-sit two small children” The record offers little to no evidentiary support for this speculative contention.

Appellant was required, for a single day, to watch a five year old and a seven year old child. The only evidence in the record is that the children mostly watched T.V. that day and Appellant was required to do little more than prepare them meals. ROA. pp. 19-21; pp. 36-37; pp. 42-46. This task is not an unreasonable request of a fifteen-year old, nor does the record indicate that Appellant was unwilling to watch the children. There was no evidence of any pressure, no evidence that Appellant “snapped”, no evidence of a lack of malice. The only evidence was that Appellant brutally whipped and pounded his five year old victim towards a tortured, painful death with a belt and his bare hands. The record supports sheer cruelty as the motive more so than any feasible mitigating circumstance.

The truth is tellingly told by the nature of the injuries. For instance, the Victim had “tram track” bruises, consistent with a whip-like injury made with a whip or belt. ROA. pp. 138-39, p. 141. The victim also had avulsions, “where the skins kind of pulled away from the underlying soft tissue.” ROA. p. 141, lines 6-13. On the back of the right thigh, was an avulsion where “the skin is separating from his—around soft tissue.” ROA. p. 148, lines 5-9. Dr. Presnell described “bleeding all the way to the muscle. . . . it’s diffusely bleeding from multiple impacts.” ROA. p. 148, lines 16-21. The Victim also had injuries to the mouth. ROA. pp. 149-150. But the cause of death was blunt force trauma, which caused the victim’s brain to swell until the Victim went brain dead. ROA. p. 135; pp. 151-152. Dr. Atwood testified his belief that the head trauma occurred from at least two blows to the head. ROA. p. 273, lines 9-21.

The Family Court's findings were based upon the criteria established in Kent v. United States, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966), which are as follows:

- (1) The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
- (2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
- (3) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.
- (4) The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment
- (5) The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charge with a crime in [General Sessions].
- (6) The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
- (7) The record and previous history of the juvenile, including previous contacts with the Youth Aid division, other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions.
- (8) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.

Kent, (quoted in State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998)).

In Kelsey, the Supreme Court upheld the Family Court's transfer finding the transfer hearing was "extensive". The Court noted as follows:

... It not only included the testimony of relevant witnesses, including Kelsey, but also the submission of a lengthy preadjudicatory transfer evaluation. Additionally, the family court's transfer order was detailed and raised the following points: (1) Kelsey was charged with the serious and violent offense of murder, and the victim was a young girl; (2) it was likely that the Grand Jury would return an indictment against Kelsey; (3) Kelsey's two codefendant's were going to be tried in General Sessions; (4) if tried as a minor, Kelsey would only get 24 to 54 months if convicted of the murder charge -- this was not in the community's best interest due to the seriousness of the crime; and (5) Kelsey would have less of a chance of rehabilitation in the juvenile justice system because his sentence under that system would be brief.

Kelsey, 331 S.C. at 71, 502 S.E.2d at 66.

In the instant case, the Family Court made its ruling from an extensive record. The studiousness and sincerity of the Family Court's analysis is self-evident as he made his ruling:

... I've listened carefully to the evidence that has been presented. I told you that I had been making copious notes during the presentation of the evidence.

I have reviewed that information last evening and this morning. I reviewed some additional information that was retained in the file. Of course, I had taken judicial notice of the pre-waiver evaluation that was performed, and had reviewed that prior to the commencement of this hearing, and reviewed portions of it yesterday, and then reviewed it again today.

Of particular concern and interest to this Court was the testimony of the experts who have presented evidence in this matter, not only the medical experts, but, of course, Dr. Heffler, who presented evidence related directly to the issue of rehabilitation of this juvenile.

ROA. p. 334, line 11 - p. 335, line 2. The Family Court also noted it considered the exhibits, which the Family Court enumerated on the record. ROA. p. 335, lines 3-9.

The Family Court then analyzed the evidence under the Kent factors. The Family

Court considered the first factor, the seriousness of the crime and the necessity for protection of the community, and commented: "Obviously, there is no more serious offense than a death caused by another, and particularly the death of a child." ROA. p. 335, lines 16-18.

In analyzing the second factor, whether the offense was committed in an aggressive, violent, premeditated, or willful manner, the Family Court noted that "clearly the injuries suggest that very serious violence occurred." ROA. p. 336, lines 8-9. The Court noted as follows:

I did not know until, obviously, the evidence was presented about the additional injuries which occurred, that being the bruising across the chest and abdomen, the arms, the legs, and the back of the leg, particularly the back of the right leg, as described by Dr. Presnell, and consider those to be an indication of a violent attack committed in a willful manner.

ROA. p. 336, lines 16-22.

The third factor, the Family Court noted, was an offense against a person, rather than property. As to the fourth factor, the prospective merit of prosecution, the Family Court correctly noted that even discounting the difficult testimony of the Victim's seven year-old brother, a strong circumstantial evidence case was presented. He gave an accurate and fair assessment of the evidence presented to him. The Family Court noted the fifth factor had no applicability to this case since there were no co-defendants. ROA. pp. 336-339.

Concerning the sixth factor, the sophistication and maturity of the juvenile, the Family Court found as follows:

The sophistication and maturity of the juvenile are determined by consideration of his home, environmental situation, emotional attitude, and pattern of living. Based upon the pre-waiver evaluation, everything that I hear about this young man is that he is a very bright and capable young

man, who is appropriately mature; and in some cases exceeds what would be expected of a person of his age.

.... And there's nothing which would indicate that he has any difficulty in understanding the nature of any act and the consequences of any act.

ROA. p. 339, lines 7-23.

In considering the seventh factor, appellant's previous history, including his previous contact with juvenile justice agencies and law enforcement, the Family Court noted a prior charge related to a gift card. The Family Court did not seem think the charge warranted much weight, and the Family Court declined to consider pending charges in Virginia. ROA. p. 339, line 24 - p. 341, line 3.

The Family Court found on the final factor as follows:

The final factor, and one which I must consider most seriously at this point in time, having made a decision that a Grand Jury could return an indictment on the evidence presented, are the prospects of adequate protection of the public and the likelihood of reasonably-reasonable rehabilitation of the juvenile by the use of procedures and services and facilities currently available to the Court.

Dr. Heffler, as Ms. Wingard said, was unequivocal – unequivocal in his opinion that this juvenile could be . . . rehabilitated, ... He considered him to be very bright, very capable, mature, and motivated. He felt that services were available at the Department of Juvenile Justice which would assist in this juvenile's rehabilitation until his seventeenth (17th) birthday, which is approximately a year and a month away.

So we're talking about thirteen (13) months within the juvenile system at the most. And then at that point in time, the juvenile would be moved into the Youthful Offenders Program within the Department of Corrections if space were available, and if not would move into an ordinary adult facility.

So, clearly, services are available for a period of approximately a year. But the services available after that time, directed towards rehabilitation, would be limited and

not at the same level.

In Dr. Heffler's report, he talked about negative and positive factors to consider. Positive factors included the demonstrated intellectual capacity . . . of this juvenile, and his ability to benefit from rehabilitative programs. This ability to sustain attention and motivation during evaluation is indicative of his ability to adapt to situations.

. . . The negative factors he considered were that this juvenile had been charged with a serious offense that involved the death of an individual; **and that if he was guilty of that offense, a serious lack of concern for the welfare of others would be present. And such persons were frequently regarded as difficult to rehabilitate.**

The history of minor infractions, which would be of concern . . . if there were patterns of escalating infractions; . . . that the juvenile continuously maintained he was innocent of all charges; and Dr. Heffler felt that those who maintained innocence, when they are in fact guilty of charges, were more difficult to rehabilitate. And the fact that the juvenile was reported to be likely influenced by others in a negative direction.

I do have substantial concerns about the ability to actively rehabilitate this juvenile if he is convicted, given the time factors for services before he would be placed in the Department of Corrections, even as a Youthful Offender.

I have concerns that, given the nature of the offense, if he is convicted and given the position that he takes in anticipation of any trial, maybe an impediment to his rehabilitation if convicted. And given the violent nature of the injuries to the victim, I have to express some concerns for the protection of the public.

ROA. p. 341, line 4 - p. 343, line 18 (emphasis added).

Evidence supports the Family Court's thoughtful analysis and findings. The extreme indifference to life necessary to commit the acts for the Victim's injuries certainly invoke a necessity to protect the public. Testimony by Andrea Foster from the Department of Juvenile Justice established that Appellant would be transferred to the adult population in only a year and that parole guidelines are only thirty-six to fifty-four months for the offense as a juvenile

adjudication. ROA. pp. 308-312. In any event, if adjudicated as a juvenile, he would not be retained in custody beyond his twenty-first birthday. This factor alone justifies the family court's determination in light of the homicide of a five year old. See Sanders v. State, 281 S.C. 53, 314 S.E.2d 319 (1984) (finding no error in transfer of appellant, charged with two counts of murder when he was thirteen, from family court where the maximum sentence appellant could have received was an indeterminate period of confinement not to extend past his twenty-first birthday); Kelsey, supra (noting Kelsey would only receive thirty-six to fifty-four months as a juvenile and commenting that such a short duration was not in the community's best interest due to the seriousness of the crime).

The Family Court's findings are also supported by the short duration of DJJ's rehabilitative services available to Appellant and services available thereafter, the cruel indifference to others exhibited by Appellant's actions, and other negative factors regarding rehabilitation expressed by Dr. Hefler and the Family Court. See also State v. Miller, 363 S.C. 635, 611 S.E.2d 309 (Ct. App. 2005) (finding that record did not support finding that juvenile could not be rehabilitated, but that the family court did not commit error in transferring charges to General Sessions since evidence supported the family court's findings on the seven other Kent factors). Appellant exaggerates his prospects of rehabilitation and minimize's his patent prospective danger to the public – there is quite a lot to give the decision maker pause.

Accordingly, the Family Court's transfer should be affirmed. Pittman, supra (finding the family court's determination must be wholly unsupported by the record to find error).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DAVID SPENCER
Assistant Attorney General

E. L. CLEMENTS, III
Solicitor, Twelfth Judicial Circuit

BY:


DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 20, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Florence County
 Ralph King Anderson, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

JERMAINE D. MAYWEATHERS.,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 21 I(b), SCACR.

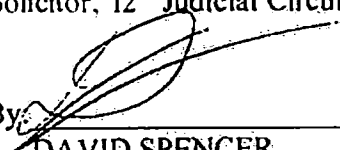
HENRY DARGAN McMASTER
 Attorney General

JOHN W. McINTOSH
 Chief Deputy Attorney General

SALLEY W. ELLIOTT
 Assistant Deputy Attorney General

DAVID SPENCER
 Assistant Attorney General

E.L. CLEMENTS, III
 Solicitor, 12th Judicial Circuit

By: 

DAVID SPENCER

Office of Attorney General
 Post Office Box 11549
 Columbia, SC 29211
 (803) 734-3727

ATTORNEYS FOR RESPONDENT

December 20, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Florence County
Ralph King Anderson, Jr., Special Circuit Court Judge

THE STATE,

Respondent,

vs.

JERMAINE MAYWEATHERS,

Appellant.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 20th day of December, 2010.


NORMA BIGBEE
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent

v.

Jermaine Mayweathers,

Appellant.

Appeal From Florence County
Ralph K. Anderson, III, Special Circuit Court Judge

Unpublished Opinion No. 2011-UP-549
Submitted December 1, 2011– Filed December 9, 2011

AFFIRMED

Deputy Chief Appellate Defender Wanda H. Carter,
of Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General David Spencer, all of

Columbia; and Solicitor E.L. Clements, III, of Florence, for Respondent.

PER CURIAM: Jermaine Mayweathers appeals his transfer from family court to the circuit court to be tried for homicide by child abuse, arguing the family court abused its discretion in waiving jurisdiction when Mayweathers had no serious prior criminal record and was an excellent rehabilitation candidate who posed no threat to the public. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Pittman, 373 S.C. 527, 559-60, 647 S.E.2d 144, 160-61 (2007) (holding the decision whether to transfer a child to circuit court is within the discretion of the family court and will only be error where the order is "wholly unsupported by the record"); id. (providing eight factors to analyze the transfer of a child to adult criminal courts).

AFFIRMED.

FEW, C.J., THOMAS and KONDUROS, JJ., concur.



The South Carolina Court of Appeals

TANYA A GEE
CLERK
V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 5, 2012

The Honorable Connie Reel-Shearin
180 N. Irby Street MSC-E
Florence SC 29501

REMITTITUR

Re: The State v. Mayweathers, Jermaine
Lower Court Case No. 2009GS2101048
Appellate Case No. 2009-141506

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Sincerely,

V. Claire Allen
V. Claire Allen
Deputy Clerk of Court

VCA/tf

cc: Jermaine Mayweathers, 340585
Wanda H. Carter, Esquire
David A. Spencer, Esquire

Jermaine Mayweather, SCDC #340585

2012 NOV -9 PM 3:41

CYANNE REEL-CLARK
CCCP & GS

State of South Carolina

Defendant(s)

CIVIL ACTION COVERSHEET

2012-CP-21-2999

Submitted By: Henry M. Anderson, Jr.
Address: 265 West Evans Street, Florence, SC 29501SC Bar#: 064280
Telephone #: 843-665-4300
Fax#: 843-665-5511
Other:
E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20-CP- - ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts- Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature:

Date: November 7, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York 829

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

FORM5

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

Jermaine Mayweather, SCDC # 340585)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2012 APR -9 PM 3:41
JERMAINE MAYWEATHER
SCDC # 340585
FLORENCE COUNTY, S.C.INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Florence General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Homocide by Child Abuse- thirty (30) years
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) September 23, 2009- 30 years
 - (b) _____

CERTIFIED: A TRUE COPY
JERMAINE MAYWEATHER
CLERK OF COURT C.R. & G.S.
FLORENCE COUNTY, S.C.

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
X
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeals of South Carolina
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Lower court decision affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. December 9, 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion; No: 2011-UP-549
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) See attached
 - (b) See attached
 - (c) See attached
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached
 - (b) See attached
 - (c) See attached
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Carrington Wingard, Assistant Public Defender, Florence Public Defender Office
 - ii. Wanda Carter, Appellate Defense on Appeal
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Waiver in Juvenile Court then trial in General Sessions
 - ii. Appeal to Court of Appeals
 - iii. _____
19. State clearly the relief you seek in filing this application:
New trial
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 Jermaine Mayweather,)
 SCDC # 340585)
 Applicant,)
)
 vs.)
)
 State of South Carolina)
)
 _____)

IN THE COURT OF COMMON PLEAS

ATTACHMENT TO APPLICATION FOR
 POST-CONVICTION RELIEF

FILED
 2012 NOV - 9 PM 3:41
 CUNNIE BELL
 CLERK OF COURT
 FLORENCE COUNTY, S.C.

10. (a) (b) (c) The Applicant, Jermaine Mayweather feels like he received ineffective assistance of counsel. He feels like his Attorney was not probably prepared. He believes that they did not spend enough time together. That witnesses were not called on his behalf. These and other reasons will be expounded upon at his Post Conviction Relief (PCR) trial.

11. (a) (b) (c) The Applicant, Jermaine Mayweather feels like he did not meet with his attorney on enough occasions to properly prepare for trial. The Applicant does not feel that his trial counsel either represented him properly or effectively at the Waiver Hearing or at the trial itself. Witnesses were not interviewed. Family members were not called to testify on his behalf. Based on all of the above the Applicant feels like his trial counsel was ineffective and seeks a new trial.

CERTIFIED: A TRUE COPY
 [Signature]
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)

County of Florence)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jeanine Mayweathers

SWORN to and subscribed before me this 4
day of October, 2012

[Signature] (L.S.)
Notary Public

My Commission Expires: 11-22-2012



ALAN WILSON
ATTORNEY GENERAL

February 27, 2013

FILED
2013 FEB 28 AM 10:45
CORRECTOR & CLERK
FLORENCE COUNTY, SC

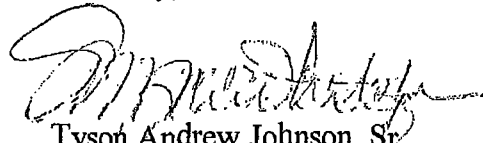
The Honorable Connie Reel-Shearin
Florence County Clerk of Court
180 N. Irby St., MSC-E, Rm. B11
Florence, SC 29501-3456

Re: Jermaine Mayweather, #340585 v. State of South Carolina
2012-CP-21-2999

Dear Ms. Reel-Shearin:

Enclosed please find the original **Return** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,


Tyson Andrew Johnson, Sr.
Assistant Attorney General

CERTIFIED: A TRUE COPY
Ma Paula Otton
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

TAJ/nb

Enclosure

Florence County Clerks Records (counsel only)
SCDC Records
PCR Application (counsel only)
Trial Transcript and Family Court Transcript

cc: Henry M. Anderson, Jr., Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

Jermaine Mayweather, 340585)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2012-CP-21-4855

RETURN

FILED
FEB 28 AM 10:45
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Respondent, making its Return to the Application for post conviction relief (PCR) filed Nov 9, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the July 2009 term of the Florence County Grand Jury for homicide by child abuse (2009-GS-21-1048). Carrington Wingard, Esquire, represented Applicant.

On September 23, 2009, Applicant was tried before a jury and convicted as indicted, and was sentenced by the Honorable Ralph King Anderson to thirty years imprisonment. Applicant appealed his conviction and the SC Court of Appeals affirmed his conviction. The remittitur was sent January 5, 2012.

Attached herewith and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and if available, the

transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel"

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second,

counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

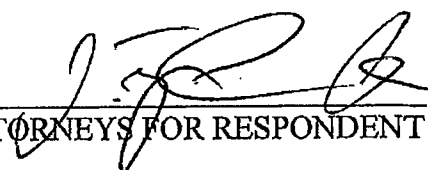
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

2/26, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

JERMAINE MAYWEATHER, #340585

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-21-2999

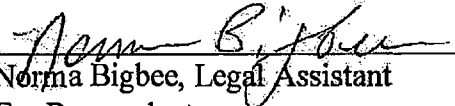
AFFIDAVIT OF SERVICE BY MAIL

FILED
 2013 FEB 28 AM 10:45
 JIMMIE REEL-2013 ANN
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, SC

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Henry M. Anderson, Jr., Esquire
265 W. Evans St., Ste. A
Florence, SC 29501

DATED this 27TH day of February, 2013.


 Norma Bigbee, Legal Assistant
 For Respondent

CERTIFIED: A TRUE COPY

 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2012-CP-21-02999
	)	
Jermaine Mayweathers,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

October 7, 2013
 Florence, South Carolina

B E F O R E :

The Honorable William H. Seals, Judge

A P P E A R A N C E S :

Henry M. Anderson Jr., Esquire
 Attorney for the Plaintiff

Josh Thomas, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Circuit Court Reporter

I N D E X

WITNESS/DESCRIPTION	PAGE NUMBER

Jermaine Mayweathers	

Direct by Mr. Anderson.....	5

Cross by Mr. Thomas.....	16

Diane Jerido	

Direct by Mr. Anderson.....	18

Carrington S.B. Wingard	

Direct by Mr. Thomas.....	25

Cross by Mr. Anderson.....	35

Redirect by Mr. Thomas.....	44

Court Reporter Certification.....	46

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption
	or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

1 OCTOBER 7, 2013

2 (WHEREUPON, the proceedings began at 2:23 p.m.)

3 THE COURT: Thank you. Everybody be seated.

4 All right. Ms. Clerk, if you'll go ahead and swear the
5 witness.

6 THE CLERK: Mr. Mayweathers, if you'll stand for me,
7 please. Do you swear or affirm to tell the truth, the whole
8 truth, and nothing but the truth, so help you God?

9 THE APPLICANT: I do.

10 THE CLERK: You may have a seat.

11 THE COURT: All right.

12 MR. THOMAS: May it please the Court. The next case is
13 Jermaine Mayweather [sic.] versus the State of South
14 Carolina, Case Number 2012-CP-21-2999.

15 Mr. Mayweather was indicted in July of 2009 for homicide
16 by child abuse. He was represented on that charge by
17 Carrington Wingard. He went to trial on September 21st
18 through the 23rd, 2009. He was convicted of homicide by child
19 abuse. The Honorable Ralph King Anderson Jr. sentenced him
20 to 30 years.

21 He did file an appeal. It was affirmed by the Court of
22 Appeals in an unpublished opinion in 2011-UP-549. The
23 remittitur was returned on January 5th, 2012. He filed his
24 PCR on November 9th, 2012.

25 He is represented by Henry M. Anderson. He's in the

JERMAINE MAYWEATHERS - DIRECT BY MR. ANDERSON

1 courtroom. We're ready to go forward.

2 THE COURT: All right. Mr. Anderson?

3 JERMAINE MAYWEATHERS, being
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. ANDERSON:

7 Q: Jermaine, when you were first charged in this case, you
8 were 15 years old; is that right?

9 A: Yes, sir.

10 Q: All right. At that point in time, did they appoint an
11 attorney to represent you as a juvenile?

12 A: Yes, sir.

13 Q: Did Mrs. Wingard represent you?

14 A: Yes, sir.

15 Q: Was she working for the Public Defender's Office?

16 A: Yes, sir.

17 Q: Did y'all have what's commonly known as a waiver
18 hearing?

19 A: Yes, sir.

20 Q: Was that actually in front of a Family Court judge?

21 A: Yes, sir.

22 Q: As a result of that hearing, were you later waived up to
23 General Sessions?

24 A: Yes, sir.

25 Q: Prior to the waiver hearing, did you have an opportunity

JERMAINE MAYWEATHERS - DIRECT BY MR. ANDERSON

1 to talk with Mrs. Wingard?

2 A: Yeah, a couple times.

3 Q: When you say a couple times, how many times do you think

4 you and her talked?

5 A: Twice.

6 Q: How many?

7 A: Twice.

8 Q: Were you out on bond at that time?

9 A: Yes, sir.

10 Q: Did y'all ever talk about your side of the story or what

11 had happened?

12 A: Yeah, we did once.

13 Q: At that time, did y'all ever talk about any experts or

14 hiring anybody on your behalf?

15 A: I think she said she was going to -- she was going to

16 hire -- hire some doctor that I talked to that Friday before

17 I went to trial. I talked to her Friday.

18 Q: Was that Dr. Heffler? Do you remember?

19 A: No, it wasn't. It wasn't him. It was a female doctor.

20 Q: A female doctor?

21 A: Yes, sir.

22 Q: Now, do you remember talking with Dr. Heffler?

23 A: Yeah, I do.

24 Q: And he, I guess, performed some type of psychological

25 evaluation on you?

JERMAINE MAYWEATHERS - DIRECT BY MR. ANDERSON

1 A: Yes, sir.

2 Q: And he did that for the Court or did he do that for you
3 or did he do that for the State or do you remember?

4 A: I want to say he did it for the State. I want to say a
5 Family -- Family Court judge ordered that.

6 Q: Okay. As a result of that hearing -- or strike that.
7 At that hearing, did you actually have a trial?

8 A: Yeah.

9 Q: Did it last more than a day?

10 A: No.

11 Q: Okay. After that was over, did you get a transcript of
12 that hearing?

13 A: No.

14 Q: Do you know if Ms. Wingard got a transcript?

15 A: I'm not sure.

16 Q: Do you recall who testified at the waiver hearing?

17 A: Dr. Heffler. I mean he was really the main one on the
18 stand.

19 Q: Do you remember if a young man by the name of

20 K.P. -- did he testify?

21 A: Yeah.

22 Q: All right. How about Deborah Williams? Did she
23 testify?

24 A: Yeah.

25 Q: You already indicated Dr. Heffler testified; is that

JERMAINE MAYWEATHERS - DIRECT BY MR. ANDERSON

1 right?

2 A: Yes, sir.

3 Q: What about a lady by the name of Dr. Susan Presnell, who
4 would have done the autopsy? Do you recall if she testified?

5 A: Yes, sir.

6 Q: What about Inv. Renee Lowder? Did she testify?

7 A: Yeah.

8 Q: Dr. Atwood?

9 A: Yeah.

10 Q: And a lady by the name of Andrea Foster? Do you
11 remember her testifying?

12 A: Yeah. The woman that works for DJJ, yeah.

13 Q: Okay. And last but not least, I think a Nancy Ingram
14 testified?

15 A: Yeah. That's my aunt.

16 Q: Would it be safe to say that, based on this waiver
17 hearing in Family Court, you and Ms. Wingard had a chance to
18 see what the State was going to try and prove?

19 A: Yeah.

20 Q: Kind of like a trial run, so to speak?

21 A: (No verbal response.)

22 Q: After that hearing was over, were you waived up as an
23 adult to General Sessions?

24 A: Yes, sir.

25 Q: Did you have an opportunity to talk with Mrs. Wingard

JERMAINE MAYWEATHERS - DIRECT BY MR. ANDERSON

1 after that?

2 A: If we did, I really don't remember.

3 Q: Were you locked up at that time?

4 A: I mean I got locked up briefly before I got a bond.

5 Q: You did get out on bond?

6 A: Yeah.

7 Q: Did Ms. Wingard help you get that bond?

8 A: Yeah.

9 Q: Okay. And that was after they had waived you up to
10 General Sessions?

11 A: Yes, sir.

12 Q: How long between your, I guess, waiver hearing and your
13 trial in General Sessions? Do you know?

14 A: I remember the waiver hearing would have been in March
15 and the trial was in September. So maybe six months.

16 Q: Six months, so to speak?

17 A: Yeah.

18 Q: And you and Ms. Wingard -- did y'all talk about your
19 case during that six-month period?

20 A: That Friday before the trial.

21 Q: Did you and her ever talk about any experts that may
22 come and testify on your behalf?

23 A: Just the doctor that I talked to that Friday.

24 Q: Did you and her ever review the -- what I refer to as
25 Rule 5 and Brady, the discovery materials?

JERMAINE MAYWEATHERS - DIRECT BY MR. ANDERSON

1 A: No.

2 Q: Did you and her ever look at any autopsy photos or
3 anything like that?

4 A: Yeah.

5 Q: Did you and her ever talk about trying to keep those
6 photos out of evidence?

7 A: No.

8 Q: Do you ever recall meeting with an investigator, either
9 Ron Smith or someone else in the case?

10 A: No.

11 Q: At that point in time, there may have been a gentleman
12 named Frank White. Do you recall --

13 A: Yeah.

14 Q: -- ever talking to him?

15 A: I talked to him. Yeah, I talked to him briefly. I want
16 to say all this happened on that same day, that Friday.

17 Q: Did Mrs. Wingard or anyone else in her office ever ask
18 you about any character witnesses that could possibly testify
19 for you?

20 A: No. I was -- I was advised against character witnesses.

21 Q: Did you and her discuss whether or not you should take
22 the stand?

23 A: Yes.

24 Q: Y'all did have that discussion?

25 A: Yes. She advised against it.

JERMAINE MAYWEATHERS - DIRECT BY MR. ANDERSON

1 Q: Her advice to you was?

2 A: To not get on the stand.

3 Q: Okay. Why did she tell you she wanted you not to take
4 the stand?

5 A: Because she said she wanted the last word.

6 Q: Did you and her ever discuss a theme or a theory of the
7 case, what it was going to be as far as your defense?

8 A: No. She asked me -- she asked me that Friday. She
9 asked me how -- how was she going to defend me, what was
10 going to be my defense.

11 Q: Did she ever advise you that you may want to explore
12 plea negotiations?

13 A: Yeah. She tried to get me to take a plea.

14 Q: Did she ever offer you a specific number?

15 A: Twenty years.

16 Q: And in this case, are you familiar that it's 20 to life?
17 Are you familiar with that?

18 A: Say that again?

19 Q: The crime itself, homicide by child abuse, carries a
20 minimum of 20.

21 A: Okay. Yeah.

22 Q: Up to a possible life sentence?

23 A: Yeah.

24 Q: So, I guess, she offered you to take the minimum, which
25 was 20, and that's what the State was offering?

JERMAINE MAYWEATHERS - DIRECT BY MR. ANDERSON

- 1 A: Yeah.
- 2 Q: You told her you wanted to go to trial?
- 3 A: Yes, sir.
- 4 Q: Did you ever have any discussions with her with a family
- 5 member present, either your father or your grandmother or an
- 6 aunt or someone like that?
- 7 A: I believe I did, but I think that was during Family
- 8 Court.
- 9 Q: How old were you at this time, Jermaine?
- 10 A: Sixteen.
- 11 Q: So still under the law's eyes -- I mean I understand in
- 12 this case you were waived up as an adult, but at age 16,
- 13 you're still considered a minor?
- 14 A: Yes, sir.
- 15 Q: During your trial, did you ever hear her tell the jury
- 16 that you were not guilty?
- 17 A: Not once.
- 18 Q: In her opening statement, did you ever hear her say
- 19 please find Jermaine not guilty?
- 20 A: No.
- 21 Q: In her closing argument to the jury, did you ever hear
- 22 her say, ladies and gentlemen of the jury, please find the
- 23 defendant, Jermaine, not guilty?
- 24 A: No.
- 25 Q: Did you ever hear those words, not guilty?

JERMAINE MAYWEATHERS - DIRECT BY MR. ANDERSON

1 A: No.

2 Q: Did you call any witnesses on your behalf at your trial?

3 A: No.

4 Q: Did you want to call witnesses on your behalf?

5 A: We did, until she advised us not to. She said it was
6 part of her trial strategy.

7 Q: Did Ms. Wingard tell you that she had been on both sides
8 before, she'd been a prosecutor and she'd been in private
9 practice?

10 A: I don't remember her telling me that. I remember my
11 grandmother telling me that.

12 Q: Jermaine, were you ever -- did you and her discuss, I
13 guess, the day's events at the end of day one, the start of
14 day 2? Did y'all ever talk about the trial when it was going
15 on?

16 A: No.

17 Q: Did you have concerns about how the trial was
18 progressing?

19 A: I felt like she could have -- she could have objected to
20 a lot more.

21 Q: Michael Bell, I believe, also sat at the table with her
22 and made some legal arguments. Did you ever have a chance to
23 talk with Mr. Bell?

24 A: No. That was pretty much the first time I ever seen
25 him.

JERMAINE MAYWEATHERS - DIRECT BY MR. ANDERSON

1 Q: Jermaine, based on what happened at trial, do you feel
2 like Mrs. Wingard should have done some other things?

3 A: Definitely.

4 Q: Such as?

5 A: Evidence that was let into the trial. Literally minutes
6 before the trial, the belt that was let in, she -- I remember
7 the prosecutor coming to the table and asking her could they
8 let it in to evidence, and she gave them consent to let it in
9 to evidence, which I believe later prejudiced the jury into
10 finding -- finding me guilty because they tied -- they
11 supposedly tied the belt into the bruising. So it made it
12 look like -- even though they didn't have my fingerprints on
13 it and my DNA, which is why she said she consented to letting
14 it in, I feel like it prejudiced the jury.

15 Q: Do you recall her ever arguing to the jury that they did
16 not have any of your DNA or your fingerprints or anything
17 like that on any belt or any --

18 A: Yeah, she said that.

19 Q: Okay. Do you recall whether or not she let any other
20 evidence in that you thought she should not have?

21 A: Not that I know of.

22 Q: Anything else that you thought she should have done or
23 not done?

24 A: I really feel like she -- I really feel like she should
25 have let some of my family testify so -- so the jury could

JERMAINE MAYWEATHERS - DIRECT BY MR. ANDERSON

1 have known what type of person I am instead of just going off
2 the picture that the prosecution painted.

3 Q: When --

4 A: And also --

5 Q: I'm sorry. Go ahead.

6 A: And also, the whole, not guilty. Like, not one time
7 during trial saying -- saying that I was not guilty. I mean
8 any smart juror would read through that. I mean my lawyer
9 isn't even saying that I'm not guilty. I believe any jury is
10 going to see that.

11 Q: When -- when Mrs. Nancy Ingram -- I believe you
12 testified that she's related to you?

13 A: Yeah.

14 Q: When she testified at your waiver hearing or your
15 hearing in Family Court, do you think she did a good job?

16 A: I think so.

17 Q: Would you have wanted someone like that to come and
18 testify at the trial itself in General Sessions?

19 A: Yeah. So it wouldn't look like -- like I say, like the
20 picture the prosecution painted, like I was a monster. I
21 mean they didn't -- they didn't know me. So I mean what do I
22 expect them to believe? There was nobody to testify on my
23 behalf to tell them what type of person I am, what type of
24 upbringing I had.

25 Q: Anything else, Jermaine?

JERMAINE MAYWEATHERS - CROSS BY MR. THOMAS

1 A: .(Indicating by shaking head.)
2 MR. ANDERSON: Judge, that's all the questions I have --
3 THE COURT: All right.
4 MR. ANDERSON: -- of Jermaine at this time.
5 THE COURT: Mr. Thomas?
6 CROSS-EXAMINATION
7 BY MR. THOMAS:
8 Q: Good afternoon, Mr. -- is it Mr. Mayweather or Mr.
9 Mayweathers?
10 A: Mayweathers with an S.
11 Q: Okay. I apologize for earlier. You said you met with
12 Ms. Wingard twice before the waiver hearing, and you don't
13 recall meeting with her at any point between?
14 A: Nah. I mean there were times, like at my bond
15 agreement, I had to write -- write a list out of what I had
16 done during the two weeks, and then I had to bring it up
17 there. I mean it's times where I've seen -- where I've seen
18 her, like, right there.
19 Q: And you said that you do recall reviewing the autopsy
20 photos with her?
21 A: Yeah.
22 Q: Did y'all go over the rest of your discovery as well?
23 A: No.
24 Q: Did you ever give her a possible defense to the charges?
25 A: No.

JERMAINE MAYWEATHERS - CROSS BY MR. THOMAS

1 Q: Did she ever ask you?

2 A: Yeah.

3 Q: And you didn't have a -- you just -- I guess I'm just
4 trying to figure out what your conversation was like when you
5 discussed those defenses. Did she -- did she offer up any
6 possible defenses for you?

7 A: No.

8 Q: Did you give her any leads to investigate in terms of
9 the other witnesses you'd like to call?

10 A: No.

11 Q: Did you ever give her any names of anyone other than
12 your aunt?

13 A: Yeah. My -- my mother's family, my grandmother, my
14 mother, and my father.

15 Q: And to your knowledge, she never contacted any of those
16 people?

17 A: She -- she contacted them, but not about testifying.

18 Q: And you said the State did make you a plea offer of 20
19 years?

20 A: Yes, sir.

21 Q: And that was your decision to turn that plea offer down?

22 A: Yes, sir.

23 MR. THOMAS: I think that's all I have.

24 THE COURT: All right. Redirect?

25 MR. ANDERSON: No redirect, Your Honor, but I would call

DIANE JERIDO - DIRECT BY MR. ANDERSON

1 another witness.

2 THE COURT: All right. Go ahead.

3 MR. ANDERSON: Your Honor, I would call Diane Jerido.

4 THE COURT: All right.

5 THE CLERK: Do you swear or affirm to tell the truth,
6 the whole truth, and nothing but the truth, so help you God?

7 THE WITNESS: I do.

8 THE CLERK: You can have a seat.

9 DIANE JERIDO, being first duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. ANDERSON:

13 Q: Ms. Diane, would you please spell your name for the
14 court reporter?

15 A: Diane is D-i-a-n-e and my last name is J-e-r-i-d-o.

16 Q: Ms. Diane, what is your relationship to Jermaine?

17 A: That's my grandson.

18 Q: All right. Is that your grandson on your --

19 A: My son's side.

20 Q: Your son's side? All right. Where do you live?

21 A: I live in Bayonne, New Jersey.

22 Q: Do you still live in New Jersey?

23 A: Yes.

24 Q: Do you get to come down to South Carolina on occasion?

25 A: Yeah. To check on him, yes.

DIANE JERIDO - DIRECT BY MR. ANDERSON

1 Q: Were you present --

2 THE COURT REPORTER: She needs to speak up.

3 MR. ANDERSON: You need to speak up.

4 THE COURT: Yeah. I can't hear her either.

5 BY MR. ANDERSON:

6 A: I have family in Florence, and I come down so I can

7 visit them.

8 Q: Were you present for his Family Court hearing when he

9 was waived up as a juvenile?

10 A: Yes, I was.

11 Q: Did you actually get to sit in the courtroom?

12 A: Yes, I did.

13 Q: Did you ever have a chance to talk with Mrs. Wingard

14 about his case?

15 A: Yes. I was with him when he -- when he spoke with her.

16 Q: How many times did Jermaine meet with her, if you

17 remember?

18 A: Before his trial, he met with her twice, and she didn't

19 have the autopsy report. So we met the Friday before he went

20 to court.

21 Q: Now, was that the Friday before the Family Court hearing

22 or the Friday before the, I guess, trial in General Sessions?

23 A: The Friday before the trial in General Sessions.

24 Q: So the second trial?

25 A: Yes.

DIANE JERIDO - DIRECT BY MR. ANDERSON

1 Q: During that time, I know that you lived in New Jersey,
2 but were you coming back to Florence a lot?

3 A: I was -- I was back and forth. I was there every time.

4 Q: Did Mrs. Wingard ever discuss the case with you?

5 A: Yes. She discussed it with me and him. She wanted to
6 speak with him alone most of the time, but he wanted me
7 there. So I was there. His mother wanted me there. I was
8 there. His father wanted me there with him. So I was with
9 him when every -- through the whole course.

10 Q: Did you ever raise any questions that you had about the
11 case to Mrs. Wingard?

12 A: Yes. When she said that they didn't have -- they didn't
13 have any type of defense to raise, I raised the question,
14 well, what's the evidence against him. I asked her, and she
15 said that she had testimony from the doctor -- the doctor,
16 the pediatrician, not the actual doctor that did the surgery,
17 but from the pediatrician, and my question was where is the
18 doctor that did the surgery, you know, because my concern was
19 that it never came out in the trial about him falling off the
20 bed and nobody made a big issue of that, that he -- the child
21 hit his head the night before and he had a knot on his head
22 and he bled through the night.

23 And also, another concern was the fact that when my
24 grandson called for emergency help for him, the whole tape
25 wasn't played. They took parts of the deposition -- the

DIANE JERIDO - DIRECT BY MR. ANDERSON

1 statement out when they questioned him. They questioned him
2 alone.

3 And I have a whole lot of questions. Nothing got
4 answered.

5 Q: Okay. Did you raise those questions to Mrs. Wingard?

6 A: A lot.

7 Q: Now, you indicated earlier that one doctor actually
8 performed the surgery, and I know you're not from Florence,
9 but was -- did Dr. Ray, Andy Ray, did he do the surgery?

10 A: That's the name that came out in the -- the juvenile
11 hearing, Dr. Ray that did the surgery.

12 Q: But he did not do -- or he did not testify?

13 A: No. I even went -- I did a lookup on him. I couldn't
14 even find him. He was an intern at McLeod. I had no
15 address. I was trying to find that doctor, and I was curious
16 as to why, if he actually did surgery on that child's head,
17 he didn't get to testify. That bothered me.

18 And the pediatrician, the retired doctor that was an
19 expert witness, he got to testify. Dr. Ray should have known
20 what actually happened, the shape the kid was in when he came
21 to the emergency room. That's my feeling, but Dr. Ray never
22 testified.

23 Q: Do you have some questions as to the swelling that was
24 exhibited in photographs?

25 A: Yes. When she called us in to the office to show us the

DIANE JERIDO - DIRECT BY MR. ANDERSON

1 pictures that they had, that was when they showed us the
2 pictures on a screen, and she said it looks pretty bad. And
3 my question to her was that wasn't from the beating, that's
4 from the surgery. His head -- the pictures was from after
5 the surgery that showed that the child's head was swollen.
6 It was swollen because he had surgery. When they cut your
7 head open, of course, it's going to be swollen.

8 That was never brought out in the trial that these are
9 pictures -- the jury saw pictures. They didn't know that was
10 from surgery. They thought it was from a beating. They
11 didn't know it was -- wasn't from surgery because that was
12 never brought out. Even his attorney didn't bring it out.
13 No. The jury didn't know anything.

14 Q: Ms. Diane, during the trial, did you ever hear his
15 counsel indicate that he was not guilty?

16 A: No.

17 Q: During the closing arguments, did you ever hear her or
18 anyone else at the table say that he was not guilty?

19 A: No.

20 Q: Are there any other concerns that you have about the
21 trial in General Sessions that you either raised to --

22 A: That she allowed a belt, a cloth belt, to be introduced
23 as a weapon that was -- the child was beat to death. I know
24 it was a cloth belt because back in my day, I wore that type
25 of belt. It was a long white belt with little circles on it

DIANE JERIDO - DIRECT BY MR. ANDERSON

1 and it was -- that was supposed to have been the weapon.

2 And the fact that she -- she didn't bring out that that
3 child had several accidents prior, and maybe that last fall
4 could have been what it was and not a beating from my
5 grandson, but he had three prior accidents to the head.

6 The autopsy report -- I read it myself up at the court.
7 It came the last minute; so we finally got to see it, but it
8 was last minute. But everything that was there was old
9 injuries. It wasn't no really fresh beatings except for the
10 surgery.

11 Q: Ms. Diane, did you ever tell Mrs. Wingard that you would
12 like to testify on his behalf?

13 A: Yes, I did.

14 Q: What did she tell you?

15 A: It wasn't a good idea because she needed to have the
16 last closing argument.

17 Q: Do you -- if you could have testified, what would you
18 have testified to?

19 A: The type of child that my grandson was, the way he grew
20 up, and I knew -- I felt like he wouldn't have did anything
21 like that, and the evidence was not there to show that he --
22 he did this.

23 Q: Did you have any other family members there that could
24 have been called as character witnesses?

25 A: Yes. My -- well, my sister, Nancy, that, you know, took

DIANE JERIDO - DIRECT BY MR. ANDERSON

1 him in when they let him out. I had my sister, Nancy, my
2 sister, Louise. I have family. His mother was there. His
3 father was there. That was about it.

4 Q: Do you feel like that had a bearing on the case or could
5 have had a bearing on the case?

6 A: Yeah. Well, I was told by my niece that one of the
7 jurors that was on the trial said -- that worked with her.
8 She said we didn't know anything about the kid. She said his
9 lawyer did not put anybody in to say what type of kid he was.
10 He could have been a street kid. He could have had a good
11 upbringing. That was never brought out.

12 Q: All right.

13 A: And I felt like that might have had a difference too in
14 the way that they see him. And the fact that the way he
15 called in, he ran and he called in. He got the help he
16 needed. He was at the hospital, everything. He was
17 concerned. None of that came out.

18 Q: Anything else, Ms. Diane?

19 A: Not that I can think of.

20 MR. ANDERSON: Judge, that's all I have.

21 THE COURT: All right. Mr. Thomas?

22 MR. THOMAS: No cross-examination.

23 THE COURT: All right. Any other witnesses?

24 MR. ANDERSON: No, sir, not at this time.

25 THE COURT: All right. If the State will call your

CARRINGTON WINGARD - DIRECT BY MR. THOMAS

1 first witness.

2 MR. THOMAS: The State would call Ms. Carrington
3 Wingard.

4 THE CLERK: Yes, ma'am. Do you swear or affirm to tell
5 the truth, the whole truth, and nothing but the truth, so
6 help you God?

7 THE WITNESS: I do.

8 THE CLERK: Okay.

9 CARRINGTON WINGARD, being
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. THOMAS:

13 Q: Good afternoon, Ms. Wingard. Just some background
14 information. How long have you been practicing law?

15 A: I've been a lawyer for 41 years.

16 Q: And has all of that been defense work?

17 A: No. When I first got out of law school, I actually
18 taught prosecution clinic at the law school. I was briefly
19 in private practice in Columbia, and I've worked for the
20 state legislature as counsel for the House Judiciary
21 Committee for several years.

22 I then moved to Florence to marry one of my committee
23 members. I was a prosecutor for a number of years, and I
24 think probably all told, 15 to 20 years. Also, I was a full-
25 time city judge for 5 years. Then I became -- I hung out my

CARRINGTON WINGARD - DIRECT BY MR. THOMAS

1 shingle in January of 2000 and became a part-time public
2 defender at that time, and I was a part-time public defender
3 at the time that I represented Jermaine.

4 Q: And so you were appointed on this case then, I guess?

5 A: Yes. It was through my position in the Public
6 Defender's Office.

7 Q: And did you -- when you were appointed, did you file any
8 of the standard Rule 5 and Brady motions?

9 A: Yes, we would have.

10 Q: And did you get responses to those?

11 A: Yes, we did.

12 Q: Could you just basically summarize the State's case
13 based upon your view of this?

14 A: Yes. Jermaine was living in Virginia with his mother.
15 He was sent to South Carolina for the summer to stay with his
16 father. His father was living with a lady, Ms. Williams, who
17 is the mother of the deceased.

18 On the morning of this incident, his father left to take
19 a road trip. He left Jermaine with Ms. Williams and her two
20 little boys; one was 7 at the time and one was 4 at the time.
21 The 4-year-old died when there were just the three of them
22 home -- that is the 7-year-old, Jermaine, and **Child** -- of
23 massive head injuries.

24 Q: And did that discovery response also include some
25 autopsy photographs?

CARRINGTON WINGARD - DIRECT BY MR. THOMAS

1 A: We had much medical information, autopsy photographs.
2 There were a number of doctors involved. There was a surgeon
3 involved. There was Dr. Atwood, who testified both at the
4 waiver hearing and at the trial. Dr. Atwood is a pediatric
5 intensivist who worked a lot with greatly-ill children and
6 children who had suffered serious trauma. Then also the
7 pathologist, Dr. Presnell, testified at the waiver hearing
8 and at the trial.

9 Q: I guess, based upon your review of all of the evidence
10 that was provided to you, what was sort of your assessment of
11 the defenses Mr. Mayweathers had?

12 A: Well, the medical testimony was quite devastating for
13 the defense. One of the most graphic descriptions I recall
14 is that the doctor -- I believe it was Dr. Atwood -- had
15 described his brain as being so beaten that it was mush-like.
16 But I viewed this as a circumstantial case since Jermaine had
17 given law enforcement a statement before I was involved and
18 had said he didn't know how the child had gotten injured.

19 So I did send these -- all of these records to a doctor
20 for the defense in Charleston. She reviewed those records
21 and did not believe that she would be able to provide any
22 helpful information for the defense, but she wanted to meet
23 with Jermaine. She wanted to talk to him directly because
24 she wanted to make sure that she understood what his
25 situation was at the time that this child was injured.

CARRINGTON WINGARD - DIRECT BY MR. THOMAS

1 So Dr. Baker arranged to come up here to meet with
2 Jermaine. I believe that would have been towards the end of
3 August. The trial was scheduled to begin September 21st. I
4 had to call Dr. Baker at the last minute and tell her not to
5 come because Jermaine's family would not bring him to the
6 Public Defender's Office to meet with her.

7 We talked about having a conference call, but she felt
8 so strongly because of the serious nature of this case that
9 she wanted to have a face-to-face meeting. So we then
10 finally met -- made arrangements for her to meet with him.
11 We came up with a date that would work for her to come to
12 Charleston, and I believe that was right at the end of August
13 or first of September.

14 I do know that we spent a long time with him as a group.
15 She wanted to speak with him privately to see if she could
16 develop anything that would be helpful to our defense, but
17 ultimately, she could not.

18 Then Jermaine and I met, and I have a note in the file.
19 I can't remember the exact date, but I believe it was
20 September 5th or 6th. At that time, I explained that Dr.
21 Baker could not come up with anything helpful for the
22 defense.

23 We talked at length about the possibility of a voluntary
24 manslaughter plea. I have to tell you that that was not
25 absolutely on the table. John Jepertinger and David

CARRINGTON WINGARD - DIRECT BY MR. THOMAS

1 Richardson and I had discussed it. I believe that they would
2 have let him plead to that, and I believe under the facts
3 that we could have garnered some sympathy from the Court for
4 him and gotten substantially less than the 30-year sentence.

5 We talked and I asked him to call his mom, who was in
6 Virginia, and talk to her about it. And shortly after that,
7 he said that he wanted a trial. He did not want to try to
8 work out anything. So we went to trial.

9 Q: And was that the only -- I guess that wasn't an actual
10 plea, but was there an actual plea offer ever made?

11 A: There was never anything written, but I believe that he
12 would have been allowed to plead to voluntary manslaughter.
13 As I said, everyone felt really sorry for him. We all felt
14 that he had just been put in an untenable situation by his
15 parents. That his mom had sent him down here from Virginia
16 because she was having some difficulty with him, and then his
17 dad had just taken off and left to go on this road trip and
18 he had told this young man that he was going to go visit, I
19 think, his relative -- sick relative or something. I think
20 he went on a road trip with his buddies.

21 Q: As far as your further investigation in the case, did
22 you do anything else other than discuss it with the doctor?

23 A: Well, certainly, you know, I reviewed the transcript
24 from the waiver hearing. I actually talked to Dr. Ray, and
25 Dr. Ray could not provide anything helpful for the State --

CARRINGTON WINGARD - DIRECT BY MR. THOMAS

1 for the defense, and the State didn't feel a need to call
2 him, I think primarily because of Dr. Atwood's expertise.

3 There were some negative things from the Virginia
4 Department of Juvenile Justice. I can't recall the exact
5 name of that department, but it was comparable to our
6 Juvenile Justice. He had been in some trouble in Virginia,
7 and there was information in his files from Virginia and,
8 certainly, nothing at all serious like this, maybe some
9 property crimes, but there was information from his probation
10 officer that his mother couldn't control him and that his
11 mother was fed up with him and that kind of thing. And so,
12 you know, certainly, there was some things in his background
13 that gave me pause.

14 Q: I guess, going forward, what was sort of your theory or
15 what was sort of your defense strategy from what you were
16 hearing?

17 A: Well, the main thing at the waiver hearing was Joel
18 Heffler, who was the state evaluator -- as you know, before a
19 child can be waived up, regardless of the seriousness of the
20 crime, you have to have an evaluation done. Dr. Joel Heffler
21 gave us a very favorable evaluation of Jermaine, and said
22 that, you know, he could be rehabilitated. Jermaine is very
23 bright, a very well-spoken young man, and he got a very, very
24 favorable report from Dr. Heffler. But at the end of the
25 day, the judge waived it up, I believe because of the

CARRINGTON WINGARD - DIRECT BY MR. THOMAS

1 grievous nature of the injuries.

2 Q: And as far as you're aware, that -- the judge's decision
3 to waive him up, was that an issue on appeal?

4 A: It was. Now, of course, we don't handle the appeals.
5 We turn it over to Appellate Defense. So I am not exactly
6 sure all of the issues that were raised on appeal.

7 Q: I guess, let's move ahead a little bit. What was your
8 -- what was your sort of defense theory going into the trial?
9 What was your --

10 A: Well, it really was a reasonable doubt. That was --
11 that was the main thing because it was a circumstantial case.
12 And the other thing was the youth of this child and the
13 situation that he had been put into.

14 Q: I guess, getting into some specifics, counsel has talked
15 about everyone that testified at the trial. Do you recall
16 cross-examining everyone who testified?

17 A: I cross-examined everybody except Dr. Heffler at the
18 waiver hearing.

19 Q: And at trial, you did the same thing?

20 A: I'm sure I cross-examined. Now, Dr. Heffler, of course,
21 would not have testified at trial.

22 Q: And there was some discussion about the -- the autopsy
23 photos and, I guess, did you discuss with him the chances and
24 probability of keeping those photos out of evidence?

25 A: I am sure that we went over all of the evidence that we

CARRINGTON WINGARD - DIRECT BY MR. THOMAS

1 expected to have introduced and, of course, they were
2 introduced at the waiver hearing too. So -- so Jermaine had
3 seen them before.

4 Q: And do you remember how many photos there were total?

5 A: I don't.

6 Q: But there was a significant number of them left out that
7 weren't entered into evidence?

8 A: Yes, there were.

9 Q: And you, I believe -- did you raise an objection to the
10 ones that were entered?

11 A: I'm sure I did. I have not re-read all of the
12 transcript, but I feel certain that I did.

13 Q: And there was some discussion about you never used the
14 phrase, exact phrase, the defendant is not guilty. Was there
15 a particular reason why that just never --

16 A: I just can't remember whether I did or not. Normally, I
17 would say, we ask you to return a verdict which speaks the
18 truth. In this case, it would be not guilty. But again,
19 I've not read the whole transcript.

20 Q: You said that he gave a statement to the police. Do you
21 remember viewing that statement with him?

22 A: Oh, I did, yes.

23 Q: And did you get an opportunity to challenge that
24 statement's admission at trial?

25 A: I did, yes.

CARRINGTON WINGARD - DIRECT BY MR. THOMAS

1 Q: The belt that was entered into evidence -- did you
2 object to that?

3 A: Quite candidly, I cannot remember the belt. I do
4 remember that there was some belts at the house, but again, I
5 would have to look at the transcript and I just can't
6 remember whether I objected to the belt or not.

7 Q: And as far as the -- the theory that the injury that
8 ultimately killed the young child -- was your theory that
9 that injury had happened prior to being left alone?

10 A: Well, we really -- when I first got into this case,
11 before we had all of the medical evidence -- and I think
12 that's one reason he got out. There appeared to be some
13 holes, and I think that's why the Family Court judge did not
14 detain him, but let him stay with Ms. Ingram.

15 But as we looked into it and looked into it farther, the
16 evidence was such that it just would not have been possible,
17 according to the evidence and our doctor concurred, for this
18 child to have done anything after the injuries were
19 inflicted. That these injuries were so grave and so grievous
20 that he could not have possibly functioned in any meaningful
21 way.

22 Q: And how did that -- that opinion conflict with the story
23 the State put forward? I mean -- I'm sorry. That's
24 inartfully worded.

25 A: That was the State's position. See, Jermaine and the

CARRINGTON WINGARD - DIRECT BY MR. THOMAS

1 little boys were home by themselves for a number of hours
2 before 9-1-1 was called. So -- and so it was just
3 uncontradicted that Jermaine was the only person with the
4 little boys before this injury.

5 And what -- when we first -- when we did the detention
6 hearing -- see, we had several detention hearings in this
7 case too. So I frequently met with Jermaine and saw him.

8 And when we first started doing the detention hearings
9 -- you know, at the first of the case you don't have all the
10 evidence. So we were hoping that the evidence would be such
11 that there could have been a number of hours before the
12 injuries manifested themselves and materialized.

13 Q: But you did -- but you did attempt to argue to the jury
14 that the injury could have happened at a time when --

15 A: Yes. Yes.

16 Q: When Mr. Mayweathers gave you sort of some other
17 witnesses to possibly call, did you discuss with him the
18 benefits of calling those witnesses versus not calling them?

19 A: Yes. We -- we fully discussed the trial strategy of
20 having the last argument. Again, we talked about character
21 witnesses. I knew what was in the reports from Virginia.
22 The State would have had those because of the waiver hearing.
23 And certainly, there were things that we may have opened the
24 door with.

25 Q: So ultimately though, whose decision was it not to

CARRINGTON WINGARD - CROSS BY MR. ANDERSON

1 present a defense?

2 A: It was Jermaine's.

3 MR. THOMAS: I think that's all the questions I have.
4 Please answer anything Mr. Anderson has.

5 CROSS-EXAMINATION

6 BY MR. ANDERSON:

7 Q: Ms. Wingard, you indicated earlier Dr. Atwood testified
8 that the brain was almost mush-like. Did you talk with Dr.
9 Ray about that?

10 A: I did talk to Dr. Ray. Dr. Ray was not helpful. He did
11 not want to get involved. He did not want to help the State
12 or the defense. He just --

13 Q: Had a private practice he wanted to run?

14 A: He was just Dr. Ray.

15 Q: I read -- when I was reading through the transcript --
16 and I'm sure you saw this or heard this, not only at the
17 waiver hearing, but also at the trial in General Sessions.

18 Dr. Atwood testified that the injury could not have been
19 caused by -- I'm talking about the injury that they
20 classified as what resulted in death, not the other injuries
21 to the young man, but the injury that resulted in death. It
22 could not have been caused by a baseball bat. It could not
23 have been caused by a golf club. It could not have been
24 caused by a baseball being thrown at him at 50 miles an hour.
25 It could not have been caused by the falling off of a second-

CARRINGTON WINGARD - CROSS BY MR. ANDERSON

1 story window. Did you ever challenge that?

2 A: I don't understand what you mean by challenge it.

3 Certainly, I cross-examined him. I don't know --

4 Q: And the reason I ask that is you may or may not remember
5 my son fell out of a grocery buggy when he was 3 and he had a
6 brain injury. Of course, when you read these transcripts,
7 that's -- the doctors say that's not possible, that couldn't
8 have happened that way, but, you know, in my son's case, it
9 did happen that way.

10 And that's what I'm asking you. I mean I know you
11 cross-examined him, but did you talk to, I guess, your
12 doctor, Baker? Had you specifically asked her --

13 A: Yes.

14 Q: -- how these injuries can occur?

15 A: Absolutely. We -- we looked at -- she looked at every
16 possibility, and I recall what she said to me was, you know,
17 with what Jermaine told law enforcement, with what Jermaine
18 told us, with what Jermaine told her, there was just no
19 helpful explanation that she could come up with. But
20 certainly, we discussed all manner of how these injuries
21 could happen. And as I said, we really had started
22 developing some -- some pretty good scenarios at the time of
23 the detention hearings, but then as we got all of the
24 medicals, it just evaporated.

25 Q: Do you recall whether or not you ever asked either Dr.

CARRINGTON WINGARD - CROSS BY MR. ANDERSON

1 Erin Presnell or if you ever asked Dr. Atwood could this
2 swelling have been done by the surgery that was performed by
3 Dr. Ray? Do you recall if you ever asked either one of them
4 that?

5 A: I can't recall asking that specifically, but I am
6 certain that I would have asked some distinction between the
7 injury and the medical treatment.

8 Q: I know that when the EMS worker testified that I can't
9 help it -- and I don't know why Judge Anderson did this, but
10 I know that you objected to it. Did he actually allow Mr.
11 Richardson to qualify the EMS worker as an expert?

12 A: Well, I think it was that crazy case, the blood spatter
13 case, you know, and I guess that's why he did that.

14 Q: I know. I know that you objected to it, but I was still
15 taken aback by that. Did the EMS worker said that he had
16 given an IV boost and they had run an IV on the ride to the
17 hospital and then, or course, at the hospital and, of course,
18 with all those fluids being pumped into the young man, of
19 course, that can also cause swelling and things like that.
20 Did you explore that possibility?

21 A: Once again, I can't tell you whether I explored it
22 directly, but Dr. Baker had all of the medical evidence, all
23 of everything in the file, and that was just nothing that
24 could be developed.

25 Q: How did you come up with Dr. Baker's name?

CARRINGTON WINGARD - CROSS BY MR. ANDERSON

1 A: She had done a presentation at a public defender's
2 conference and --

3 Q: That previous year?

4 A: Yes. And she actually, for a number of years, had done
5 work for the State. And at this time, she was trying to
6 develop into more of a defense expert. She really wanted to
7 be helpful, but she just could not.

8 Q: You indicated earlier that kind of off the record you
9 talked with David Richardson and also John Jepertinger about
10 possibly a voluntary manslaughter plea. It wasn't definitely
11 on the table, but you think they might have done -- allowed
12 him to do that. And then you talked with Jermaine and, I
13 think, you indicated that he made a call to his mom in
14 Virginia?

15 A: My notes reflect that we talked about it, and I left it
16 that he was going to discuss it with his mother. Now, I can
17 only imagine that he made that call. I was not privy to that
18 call, but that's how we left it, that he was going to call
19 his mother.

20 Q: Based on his age -- and I guess he would have been 16 or
21 17 at that time. Did you ever think, you know, this is a
22 young man, maybe I should get family in and tell them what
23 we've got? Did you ever do that?

24 A: Well, Ms. Ingram would bring him to the Public
25 Defender's Office. See, Judge Anderson -- because he had not

CARRINGTON WINGARD - CROSS BY MR. ANDERSON

1 been detained as a juvenile when he had the waiver hearing,
2 he -- he had several stops and starts with various relatives,
3 but he ended up with Ms. Ingram. And so he was -- he was
4 out.

5 Rather than making him put up a bond, Judge Anderson
6 just let him continue on his signature with the understanding
7 that he would stay with Ms. Ingram, but he had to report to
8 the Public Defender's Office every Friday. And so, of
9 course, I was not there every Friday, but we would have been
10 available to talk with him. And he had to actually talk to
11 somebody at the Public Defender's Office, but Ms. Ingram
12 would always bring him, and she was a lovely lady and very
13 polite to everyone. So we would talk with her some. Of
14 course, his mother was in Virginia.

15 Q: Do you specifically recall whether or not you ever
16 talked to his mom about various options in this case, whether
17 to go to trial or whether to explore a plea?

18 A: I -- I -- yes. I can't recall that I talked to her
19 after I talked to him about it, but it was difficult to talk
20 to them about a plea, both the mom and the dad, because they
21 were so convinced that he could not have done it. And so,
22 when I would try to talk with them about working out a plea,
23 they would, in fact, tell me to do my job and stop trying to
24 pressure him into pleading.

25 Q: You indicated earlier when you were talking with the

CARRINGTON WINGARD - CROSS BY MR. ANDERSON

1 assistant attorney general that your theory of the case was
2 reasonable doubt. What specifically -- and I've read the
3 transcript, but do you recall specifically what your argument
4 was to the jury as to why there was reasonable doubt?

5 A: Well, you know, just that it was a circumstantial case,
6 and I was really kind of hoping that they would feel sorry
7 for him because, you know, the medical evidence was so
8 overwhelming. But it's -- I have to tell you I did not re-
9 read the closing argument. I don't even know if they printed
10 the whole thing in the transcript, but it was just here's a
11 young man who has been put in an unbelievable situation, not
12 of his own doing, and where were his parents, that -- that
13 kind of thing.

14 Q: And I remember in reading in the transcript that Dr.
15 Atwood did talk about the linear bruising and he talked about
16 there were a few circular marks that I think he was alluding
17 to the fact that they were the holes in the belt, you know,
18 where you put the part of the buckle in. Do you recall
19 whether or not you objected to that belt coming in? Because
20 I do not recall it coming in at the waiver hearing, and then
21 later they brought it in at the trial itself.

22 A: I can't -- I can't remember that. I really can't.

23 Q: Go ahead.

24 A: And I'm trying to remember. I think the bruises may
25 have been at a different time. I can't recall that with any

CARRINGTON WINGARD - CROSS BY MR. ANDERSON

1 specificity, which would have suggested that it was not
2 Jermaine, but rather punishment.

3 Q: And I think you did cross-examine his mother. She had
4 used the belt on him several times?

5 A: Yeah.

6 Q: In your opening statement, would you surprised if I told
7 you that when you were finishing it up that you did not say
8 please find the defendant not guilty? Would that surprise
9 you?

10 A: I don't know if it would surprise me.

11 MR. ANDERSON: Your Honor, if I could approach the
12 witness?

13 THE COURT: Yes.

14 BY MR. ANDERSON:

15 Q: I'm referring to page 135 in the transcript at the very
16 bottom of the page.

17 A: Yeah. I mean I don't say find him not guilty, but I am
18 sure that it was very clear to the jury that that's what I
19 wanted to have happen.

20 Q: I understand. And also, in your closing argument, you
21 did not say those words either. You did not say please find
22 the defendant not guilty or anything such as that. Any
23 particular reason?

24 When I say that, Ms. Wingard, I like to tell people I
25 always give three openings: one in the shower, one in the

CARRINGTON WINGARD - CROSS BY MR. ANDERSON

1 courtroom, and then the one I say when I'm going home. I
2 always forget something.

3 But you did not say find him not guilty in your closing
4 argument either. Is there a reason why you did not do that?

5 A: I am sure I talked about it was the State's burden to
6 prove him guilty beyond a reasonable doubt. Now, whether I
7 used the words don't find -- I mean I'm sure you would not
8 misrepresent that those words were not in there, but I'm sure
9 similar words were in there.

10 Q: I am not misrepresenting. I can promise you that. Ms.
11 Wingard, Mr. Bell in your office helped you with some of the,
12 I guess, legal arguments. Did he help you at all with the
13 preparation of the trial?

14 A: He, of course, came in towards the end. I don't believe
15 he ever met with Jermaine. It was mostly Ron and I that met
16 with Jermaine.

17 Q: And, Ms. Wingard, you were kind enough to give me a lot
18 of material when I was reviewing this case. I think you
19 actually had a banker's box full of --

20 A: That you -- that we had to locate in your office.

21 Q: That -- so you did a lot of work in this case. Would
22 that be a safe statement?

23 A: That is a -- that is a safe statement.

24 Q: With a waiver hearing, you had every opportunity to
25 cross-examine any of the witnesses the State called; is that

CARRINGTON WINGARD - CROSS BY MR. ANDERSON

1 correct?

2 A: That's correct.

3 Q: And, of course, then you later actually got a transcript
4 of that prior to the trial in General Sessions?

5 A: I did and, if you went through my box, you would have
6 seen that I had highlighted it for trial.

7 Q: I saw that. That -- for lack of a better phrase, you
8 knew what they were going to testify to or similar to what
9 they were going to testify to at the, I guess, real trial, so
10 to speak; is that right?

11 A: Yes.

12 Q: Did that help you prepare your cross-examination of the
13 various witnesses?

14 A: I think it did.

15 Q: Did you actually send Dr. Atwood's testimony to Dr.
16 Baker?

17 A: I think I sent the whole -- everything, the whole waiver
18 hearing, and then all the medical records, but I may have
19 just sent the doctor's testimony.

20 Q: Did you think that his family member -- Ms. Ingram's
21 testimony was helpful at the waiver hearing?

22 A: Yes.

23 Q: Do you think that it would have been helpful for the
24 jury to hear what kind of young man he was? And I know you
25 said you didn't want to open the door, but, Ms. Wingard,

CARRINGTON WINGARD - CROSS BY MR. ANDERSON

1 you've been on both sides. I think you know how to avoid
2 opening the door. Don't you agree with that?

3 A: Well, no, because I think once we put up a character
4 witness, if you will, then the other stuff can come in.

5 Q: Based on that, did you try to explore everything that he
6 did in making that 9-1-1 call? Do you recall if you stressed
7 whether or not he --

8 A: Oh, yes. I put that -- in fact, I remember saying that,
9 you know, as soon as he realized this child was distressed,
10 he called 9-1-1. That was clearly brought out.

11 MR. ANDERSON: Judge, I think that's all the questions I
12 have.

13 THE COURT: All right. Any redirect?

14 MR. THOMAS: Just a couple things briefly.

15 REDIRECT EXAMINATION

16 BY MR. THOMAS:

17 Q: Just so the record is clear, who is Dr. Baker?

18 A: Her name is Elizabeth Baker. She is a medical doctor
19 from Charleston. She was a -- an expert on child sexual
20 abuse and then she started developing into all areas of child
21 abuse.

22 Q: Okay. And ultimately, whose decision was it to go to
23 trial instead of exploring a plea offer?

24 A: It was Jermaine's.

25 Q: And when you talk about the belts that were picked up,

CARRINGTON WINGARD - REDIRECT BY MR. THOMAS

1 there was more than one belt introduced at trial; correct?

2 A: I honestly cannot remember that. What I remember about
3 the belt is exploring that -- that these could have been used
4 before, and Ms. Williams saying that she did spank her boys.

5 Q: And you do remember -- so you do remember discussing the
6 belts, both with the witnesses and in your closing?

7 A: Yes.

8 Q: And I know you never actually said that to the jury and
9 never implored the jury to find him not guilty, but you did
10 tell them not to make a second tragedy out of him?

11 A: Yes. I remember saying that.

12 MR. THOMAS: That's all I have. Thank you.

13 THE COURT: All right. Anything else?

14 MR. ANDERSON: No, sir, Your Honor.

15 THE COURT: All right. If you'll call your next
16 witness.

17 MR. THOMAS: That's all from the State, Your Honor.

18 THE COURT: You can step down. Thank you. All right.
19 I'll take the matter under advisement and advise you of my
20 ruling in the near future. Thank you both.

21 (WHEREUPON, the proceedings ended at 3:23 p.m.)

22

23 --- END REQUESTED TRANSCRIPT ---

24

25

1	State of South Carolina	)	
2		)	Certificate
3	County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 45, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 7th day of October, 2013.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.

16
17 s/ Krystal J. Smith

18 Court Reporter

20	Florence, South Carolina

21 December 30, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Jermaine Mayweather, #340585,)

Case No. 2012-CP-21-2999

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

FILED
2013 DEC 10 PM 12:27
CORINNE REED-GRIFFIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief

(PCR) filed November 9, 2012. Respondent made its Return on or about February 27, 2013. The Court convened an evidentiary hearing into the matter on October 7, 2013, in Marion County. Applicant was present at the hearing and represented by Henry M. Anderson, Jr., Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's grandmother, Ms. Jerrido, also testified on his behalf. Applicant's trial counsel, Carrington S.B. Wingard, Esquire, also testified. The Court had before it the waiver hearing transcript, the trial transcript, the records of the Florence County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In July 2008, the State filed a petition in the Florence County Family Court charging Applicant with homicide by child abuse

(2008-JU-21-108). Carrington Wingard, Esquire, ("trial counsel") represented Applicant on the family court charge. The Honorable Jerry D. Vinson convened a hearing on the petition on March 18-19, 2009. At the conclusion of the hearing, Judge Vinson waived Applicant's charges up to circuit court. Subsequently, in July 2009, the Florence County Grand Jury indicted Applicant for homicide by child abuse (2009-GS-21-1048). Ms. Wingard also represented Applicant in circuit court.

On September 21-23, 2009, Applicant was tried before the Honorable Ralph King Anderson, Jr., and a jury. The jury found Applicant guilty as indicted. Judge Anderson sentenced Applicant to thirty (30) years imprisonment.

Applicant filed a timely notice of appeal. Wanda H. Carter, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on December 9, 2011. State v. Mayweathers, Op. No. 2011-UP-549 (S.C. Ct. App. filed December 9, 2011). The remittitur was returned to the circuit court on January 5, 2012.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully because of ineffective assistance of counsel. Specifically, Applicant alleged "he did not meet with his attorney on enough occasions to properly prepare for trial[;] that his trial counsel either represented him properly or effectively at the Waiver Hearing or at the trial itself[;] [w]itnesses were not interviewed[;] [and that] [f]amily members were not called to testify on his behalf."

At the PCR hearing, Applicant explained that his allegations regarding counsel's effective representation at trial centered around her failure to exclude some of the State's

evidence and her failure to ask the jury to find him not guilty. He also proceeded on the allegation that trial counsel never called members of his family to the stand to testify on his behalf.

III. SUMMARY OF TESTIMONY

Applicant testified he was fifteen years old when arrested. He recalled meeting with trial counsel "a couple" of times before the waiver hearing. Applicant testified to discussing his theory of the case with trial counsel at these meetings. He further testified he spoke with a female doctor, Dr. Baker, and the evaluator from the Department of Juvenile Justice ("DJJ")

prior to the waiver hearing. He understood the waiver hearing was a trial run for any eventual trial on the charges. Applicant testified trial counsel did help him get out on bond while he awaited trial in circuit court. However, he testified he does not remember meeting with her in the sixth months between the waiver hearing and trial. He did speak with her the Friday before trial was set to begin. He testified that at that meeting they discussed calling Dr. Baker as an expert. He further testified they reviewed the state's autopsy photos, but that they did not discuss attempting to keep them out of evidence. He also testified trial counsel discussed with him his right to testify, but that she advised against it so that she could make the last argument.

Applicant testified trial counsel negotiated a twenty (20) year plea offer with the State, but he declined it. He further testified that trial counsel called no witnesses on his behalf and never asked the jury in opening or closing arguments to find him not guilty. He also alleges she never tried to exclude a belt the State entered into evidence. Applicant also believes trial counsel should have had the belt examined for prints or at least have argued to the jury that there was no

evidence his prints were on the belt. He believes his aunt, who testified at the waiver hearing, would have been a good witness to present to the jury.

Applicant's grandmother testified she spoke to trial counsel on at least one occasion. She testified that she raised to trial counsel the issue of calling the doctor to testify, but the doctor did not testify. The grandmother also testified she was concerned the 911 tape was never played for the jury. The grandmother also testified she believed the jury would have benefitted from hearing testimony about Applicant's upbringing.

Trial counsel testified she was appointed on this case and filed Rule 5/Brady motions.

She testified she reviewed the State's discovery responses with Applicant. Trial counsel testified the State's theory was that Applicant was the only person in the house capable of inflicting the fatal injuries on victim. She testified the case was somewhat circumstantial, but the medical evidence was overwhelmingly against Applicant. Trial counsel met with Applicant several times before the waiver hearing in family court. Prior to the waiver hearing, trial counsel spoke with Applicant's family members, the Department of Juvenile Justice evaluator, and Dr. Baker, a doctor in Columbia. She testified she sent the victim's records to Dr. Baker for review, but Dr. Baker indicated the evidence was overwhelming and he could not testify contrary to the official report. Trial counsel also testified Applicant's family had difficulty getting him to meet with Dr. Ray while he was out on bond. Applicant and Dr. Ray finally met in early September 2009. Trial counsel testified Dr. Ray wanted to be helpful to Applicant's case, but Dr. Ray could ultimately provide no helpful testimony.

Trial counsel testified she explained to Applicant the waiver hearing would be a trial run for an eventual trial. She testified that after hearing the testimony at the waiver hearing, the

defense strategy was to attempt to create reasonable doubt in the State's evidence. Primarily, she argued the brain injuries were related to prior bumps on the head. However, she admitted this strategy was difficult because the medical evidence overwhelmingly demonstrated the severity of the damage would have rendered the child incapacitated well before applicant dialed 911.

Trial counsel testified she unsuccessfully attempted to exclude Applicant's statement at the waiver hearing and at trial. She also challenged the introduction of the EMT as an expert. Trial counsel testified she was able to keep out most of the autopsy photos, but that the trial judge admitted others over her objection. She testified she did not recall objecting to the introduction of a belt, but that the belt was not ultimately related to the injuries to victim's brain.

Trial counsel testified she entered into plea negotiations with the State. She testified she believed the State was willing to offer a plea to voluntary manslaughter. However, Applicant indicated he did not want to take a plea. Trial counsel further testified Applicant's family informed her to stop pursuing plea negotiations because they believed Applicant to be innocent. She further testified she discussed with Applicant the right to present a defense. However, Applicant was aware he had some negative reports from his Virginia juvenile probation officer. He understood that if he presented one character witness, the State could introduce his prior record. In light of this, Applicant chose not to present a defense.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and

conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003):

A. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

The Court finds Applicant's failed to meet his burden of proof regarding his allegation that trial counsel did not properly prepare for trial. Regarding this allegation, the Court finds Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. The Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. Specifically, the Court notes trial counsel testified she thought this was an important case and she devoted a substantial amount of time to it. She met with Applicant and thoroughly discussed with him the evidence and trial strategy. She also engaged in plea negotiations until directed by Applicant and his family to prepare for trial. Further, trial counsel's investigation involved contacting two doctors to attempt to discredit the State's theory of the case. Therefore, Applicant's allegations trial counsel did not meet with him and prepare for trial are without merit.

The Court also finds Applicant has not met his burden of showing trial counsel's performance at trial was deficient. Specifically, the Court notes that trial counsel raised objections to the introduction of Applicant's statement, the autopsy photographs, and the expert testimony of the EMT. Trial counsel also thoroughly cross-examined each witness and attempted to discredit the medical testimony as best she could. The record reflects and this Court finds trial counsel subjected the State's case to a thorough and "meaningful adversarial testing." Nance v. Ozmint, 367 S.C. 547, 553, 626 S.E.2d 878, 881 (2006).

Further, the Court has reviewed trial counsel's opening statement and closing argument and finds no error in failing to ask the jury to find Applicant innocent. Trial counsel testified she

implored the jury to not make a second tragedy of Applicant's life. When viewed in light of the whole record, the jury clearly understood trial counsel was arguing for a verdict of not guilty.

Likewise, trial counsel was not deficient for failing to object to the introduction of the belt. Trial counsel testified the belt was seized as part of the State's investigation, and the record reflects it was properly authenticated at trial. Thus, trial counsel would have had no grounds to exclude the belt at trial. The record also indicates trial counsel brought out on cross-examination that Applicant's prints were not on the belt. She further testified the belt was not related to the brain injuries sustained by victim. Thus, the admission of the belt was not prejudicial to Applicant.

Finally, the Court finds no deficiency from failing to call witnesses on Applicant's behalf. Trial counsel testified she reviewed the risks of calling family members as character witnesses. She testified Applicant also understood the benefits of not presenting a defense and having last argument. Thus, the Court finds trial counsel articulated a valid reason for not presenting a defense. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). The Court further finds Applicant made a knowing and voluntary decision to not present a defense.

Regardless, plea counsel provided competent representation in light of the overwhelming evidence against Applicant. Applicant gave a statement to police that the victim was awake and functioning the morning before the 911 call. This statement was supported by the testimony of the victim's brother at trial. Medical experts testified the victim would have been incapacitated

once he sustained the injuries. Coupled with the testimony that Applicant was the only person in the house capable of inflicting such severe injuries, the jury was presented with a strong circumstantial case. Thus, the Court finds Applicant cannot show any errors by trial counsel that would have changed the result of his trial. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

B. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

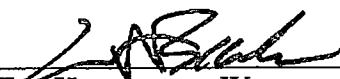
Based on the foregoing, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes that Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 27 day of Nov, 2013.


 THE HONORABLE WILLIAM H. SEALS, JR.
 Presiding Judge
 Twelfth Judicial Circuit

, South Carolina

FILED
 2013 DEC 10 PM 12:27
 CONNIE REEL-SHEARIN
 CCJP & GS
 FLORENCE COUNTY, SC

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2102999

Jermaine Mayweather

2013 DEC 11 AM 11:14 State

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other: _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

12/11/2013

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **December 10, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **December 11, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

Henry Morris Anderson Jr. 265 W. Evans St. Ste. A
Florence, SC 29501

ATTORNEY(S) FOR THE PLAINTIFF(S)

Joshua Lee Thomas PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearin

Court Reporter

Connie Reel-Shearin - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORMS

STATE OF SOUTH CAROLINA)
COUNTY OF Florence 2011023) IN THE COURT OF COMMON PLEAS
COURT)
Full name and prison number (if any) of Applicant:)
Jermame Mayweathers) 2014 CP 21 1683
State of South Carolina) APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention: Lee Correctional Institution
2. Name and location of Court which imposed sentence: Florence County Court
3. Name(s) of co-defendant(s) (if any): N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-615-21-1048
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Sept 23, 2009 - 30 year sentence
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The S.C. Court of Appeals
- ii. Florence County Court of Common Pleas
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. Dismissed
- iii. _____
- (c) the date of each such result:
- i. 12-9-11
- ii. 12-11-13
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. ~~2012 CP 2102999~~
- ii. 2012 CP 2102999
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: ineffective assistance of PC counsel
pursuant to Austin v State

Revised 3/2008

- (a) _____
 (b) _____
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) PER counsel failed to file a timely appeal from PER's court order of dismissal
 (b) _____
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? YES
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 (d) any other petitions, motions or applications in this or any other Court? YES

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. Direct Appeal
 ii. PER
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. South Carolina Court of Appeals
 ii. Florence County Court of Common Pleas
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. Dismissed
 ii. Dismissed
 iii. _____

Revised 3/2003

- iv. _____
- (d) the date of each such disposition:
- i. 12-9-11
- ii. 12-11-13
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. 2012CP2102999
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Ineffective assistance of PCR counsel, this is the only court where issue can be addressed
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

Revised 3/2003

- (a) your arraignment and plea? N/A
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Carrington Winggard
 - ii. Henry M. Anderson 265 W. Evans St. Florence, S.C. 29501
 - iii. Wanda Carter
- (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. PCR
 - iii. Direct Appeal

19. State clearly the relief you seek in filing this application:

Belated appeal to PCR

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

VERIFICATION

County of Florence

Jermayne Mayreath

I, Jermayne Mayreath, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jermayne Mayreath

SWORN to and subscribed before me this

day of Nov, 2014.

Debra Sines

(L.S.)

Notary Public

My Commission Expires:

11-4-2015

FILED

2014 DEC 10 PM 2:31

 COURT CLERK
 COOPER & CO.
 FLORENCE COUNTY, S.C.

Revised 3/2003

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Jermaine Mayweathers, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

SWORN or affirmed to and subscribed before me this
19 day of NOV, 2014.

Debra Jones
 Notary Public

My Commission Expires: 11-4-2015

Jermaine Mayweathers
 Applicant
Jermaine Mayweathers

FILED
 2014 DEC 10 PM 2:31
 CLERK OF COURT
 FLORIDA COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Jermaine Mayweather,
S.C.D.C. No. 340585,

2014-CP-21-3583

Applicant,

v.

**RETURN AND PARTIAL
MOTION TO DISMISS**

State of South Carolina,

Respondent.

In response to the post-conviction relief (PCR) application that Jermaine Mayweather (Applicant) filed December 10, 2014, the State (Respondent) would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In July 2008, the State filed a petition in the Florence County Family Court charging Applicant with homicide by child abuse (2008-JU-21-108). Carrington Wingard, Esquire, ("trial counsel") represented Applicant on the family court charge. The Honorable Jerry D. Vinson convened a hearing on the petition on March 18-19, 2009. At the conclusion of the hearing, Judge Vinson waived Applicant's charges up to circuit court. Subsequently, in July 2009, the Florence County Grand Jury indicted Applicant for homicide by child abuse (2009-GS-21-1048). Ms. Wingard also represented Applicant in circuit court.

On September 21-23, 2009, Applicant was tried before the Honorable Ralph King Anderson, Jr., and a jury. The jury found Applicant guilty as indicted. Judge Anderson sentenced Applicant to thirty (30) years imprisonment.

Applicant filed a timely notice of appeal. Wanda H. Carter, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on December 9, 2011. State v. Mayweathers, Op. No. 2011-UP-549 (S.C. Ct. App. filed December 9, 2011). The Remittitur was returned to the circuit court on January 5, 2012.

First PCR Application: 2012-CP-21-2999

Applicant filed his first PCR application on November 9, 2012, alleging the following grounds for relief:

1. Ineffective assistance of trial counsel:
 - a. Applicant did not feel he "[met] with his attorney on enough occasions to properly prepare for trial[;] that his trial counsel either represented him properly or effectively at the Waiver Hearing or at the trial itself[;]" and Applicant felt that "[w]itnesses were not interviewed[;] [and that] [f]amily members were not called to testify on his behalf."

An evidentiary hearing was held on February 27, 2013. Henry M. Anderson, Jr., Esquire, represented Applicant. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent. The Honorable William H. Seals denied and dismissed the application with prejudice in an order filed December 10, 2013. Applicant did not appeal Judge Young's order.

II.

Applicant filed his *second* and current application on December 10, 2014, alleging the following grounds for relief:

1. Ineffective assistance of PCR Counsel; specifically
 - a. PCR Counsel was ineffective in failing to file an appeal following the denial of application.

For the purpose of this return, Respondent incorporates the Florence County Clerk of Court's records regarding the subject guilty plea, appellate records, South Carolina Department of Corrections records, and Applicant's previous and current PCR records. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation is without merit. Applicant alleges ineffective assistance of counsel in that he was denied the right to an appeal from the denial of his first PCR application. "The right to seek appellate review of the denial of PCR is expressly authorized by state law." Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991); S.C. Code Ann. § 17-27-100 (2014). A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999). However, an applicant may waive the right to appeal by making a "knowing and intelligent decision not to pursue the appeal." Simuel v. State, 390 S.C. 267, 271, 701 S.E.2d 738, 739-40 (2010). "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981). Even if the PCR court determines the applicant did not freely and voluntarily waive his appellate rights, the applicant must still petition the South Carolina Supreme Court to determine whether he was prejudiced by his failure to obtain review of a meritorious issue. Odom, 337 S.C. at 263, 523 S.E.2d at 756.

Respondent submits Applicant knowingly and intelligently waived his right to appellate review of his PCR hearing. However, this allegation raises questions of fact which cannot be

conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

Respondent submits that any further claims must be summarily dismissed as successive to Applicant's previous applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) provides:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are prohibited unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the

allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant could have raised additional grounds for relief in his prior post-conviction relief application. Any allegation beyond Applicant's belated appeal claim would have to be supported by sufficient reasons why it could not have been raised in the previous post-conviction relief Application. Applicant has presented no such reason. Therefore any additional claims Applicant may present are barred as successive.

V.

Further, Respondent submits any other claims Applicant raises should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. See S.C. Code Ann. §§ 17-27-10 to -160 (2014). Section 17-27-45(a) states:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court held the one-year statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Moreover, ignorance of the statute of limitations for filing a petition for post-conviction relief is not an excuse for late filing. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005). Applicant was convicted of the offense he challenges in his application on September 23, 2005. The remittitur from Applicant's appeal was issued on January 5, 2012. Therefore, Applicant was required to file his PCR application on or before January 6, 2013. Applicant filed this application on December 10, 2014, more than one year after the statutory filing period expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon, 363 S.C. 432, 611 S.E.2d 494. In addition, this Court is authorized to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." § 17-27-70(c). Therefore, Respondent moves to summarily dismiss any claims in this application beyond the belated appeal claim for Applicant's failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

VI.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

[Signature block on following page]

VII.

WHEREFORE, Respondent requests an evidentiary hearing *solely* to address the issue of whether counsel was ineffective in failing to appeal the order denying Applicant's initial application for post-conviction relief; Respondent further moves to summarily dismiss any additional claim for being successive to Applicant's previous PCR application and for failure to file within the Statute of Limitations.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

PATRICK L. SCHMECKPEPER
Staff Attorney

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 17, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

JERMAINE MAYWEATHER, #340585)

Applicant,)

vs)

STATE OF SOUTH CAROLINA)

Respondent.)

IN THE COURT OF COMMON PLEAS

2014-CP-21-3583

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return And Partial Motion To Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jermaine Mayweather, #340585
 Lee Corr. Inst.
 990 Wisacky Highway
 Bishopville, SC 29010

DATED this 17 day of July, 2015


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2014-CP-21-3583
	)	
	)	
	)	
Jermaine Mayweathers	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
State Of South Carolina	)	)
<u>DEFENDANT</u>	)	August 28, 2017
		Florence, South Carolina

B E F O R E :

THE HONORABLE THOMAS A. RUSSO, JUDGE.

A P P E A R A N C E S :

JONATHAN D. WALLER, ESQ.
Attorney for the Applicant

LINDSEY A. MCCALLISTER, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, no witnesses were called.)

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E X H I B I T S

NO.	DESCRIPTION	<u>ID.</u>	<u>EVD.</u>
S-1	Handwritten Letter 2-14-2014.		
S-2	Letter From Anderson Law Firm		

1 THE COURT: Yes, ma'am.

2 MS. MCCALLISTER: Thank you. This is Jermaine
3 Mayweathers vs. State of South Carolina 2014-CP-21-3583.
4 Your Honor, there's a bit of lengthy procedural history to
5 this case, but it is relevant to the issue that we're here
6 today on. So if you'll just bear with me while I try to
7 get this right.

8 THE COURT: Sure.

9 MS. MCCALLISTER: Mr. Mayweathers was indicted
10 in Florence County for homicide by child abuse in July of
11 2008 originally in the family court. He was eventually
12 waived up to circuit court on those charges and indicted
13 in July of 2009 on the homicide by child abuse. He was
14 represented by Mr. Carrington Wingard.

15 THE COURT: I'm sorry, he was indicted in
16 general sessions court in July of ---

17 MS. MCCALLISTER: Of 2009.

18 THE COURT: 2009, okay.

19 MS. MCCALLISTER: He was represented by
20 Carrington Wingard. He proceeded to trial before Judge
21 Ralph King Anderson and a jury on September 21st through
22 the 23rd 2009 and was found guilty as indicted. Judge
23 Anderson then sentenced him to 30 years imprisonment. He
24 did file a timely notice of appeal and an appeal was
25 perfected on his behalf by the South Carolina Indigent

1 Defense Office of Appellate the Defense. And the
2 remittitur or his conviction was affirmed on December 9th
3 2011 and a remittitur was returned in January of 2012. He
4 then filed his first PCR application on November 9th of
5 2012. An evidentiary hearing was held on February 27th
6 2013. He was represented at that first PCR hearing by
7 Hank Anderson. Judge Seals denied and dismissed that
8 application with prejudice in an order filed December 10th
9 2013. And the issue hear today, Your Honor, he filed this
10 second PCR application on December 10th 2014 alleging that
11 he wanted an appeal from that first PCR and did not get
12 it. So we are here today solely on the issue of his
13 appeal.

14 Your Honor, I have talk with Hank Anderson about
15 that and he does have some documents in his file where it
16 appears Mr. Mayweathers did write to him in February of
17 2014 asking for him to appeal the decision and Hank
18 responded in a letter in September of 2014. And
19 unfortunately it appears that Mr. Anderson never actually
20 forwarded the signed copy of the order to Mr. Mayweathers.
21 And so by the time he was asking for an appeal, his appeal
22 had run and it does not appear that Mr. Anderson did ever
23 file a notice as requested. So based on these two
24 documents, Your Honor, the State is going consent to an
25 appeal ---

1 THE COURT: To the appeal?

2 MS. MCCALLISTER: Austin vs. State, yes, Your
3 Honor, of the previous PCR. And we would ask to make
4 these two letters a Court's Exhibit.

5 THE COURT: Yes, ma'am. Any objection, Mr.
6 Waller, you seen those matters I'm assuming?

7 MR. WALLER: I have, Your Honor, no objection.

8 THE COURT: All right. We'll mark these as
9 State's Exhibits 1 and 2.

10 (WHEREUPON, State's Exhibits 1 and 2 admitted
11 into evidence.)

12 THE COURT: Mr. Mayweathers, you talked with
13 Mr. Waller. You understand that the State is going to
14 agree or consent that you should be entitled to have your
15 appeal heard?

16 MR. MAYWEATHERS: Yes, Your Honor.

17 THE COURT: And so that will occur. And I don't
18 go beyond where I am at here. Do they appoint an attorney
19 to assist him his appellate process?

20 MS. MCCALLISTER: Yes, Your Honor, I believe
21 that's the process once Indigent Defense is notified of
22 the order and the order is signed that they will appoint
23 an appellate defender for him.

24 THE COURT: Okay. As soon as Ms. McCallister
25 will get that order to me, I'll get it signed get. We'll

1 get it over there. They'll appoint an attorney to assist
2 with your appeal.

3 MR. WALLER: Your Honor, I think just for the
4 record that the actual process is that the order from
5 today I will file notice of appeal. Once that notice of
6 appeal is filed, then it will be -- they'll be appointed
7 an appellate defender from that point. So I will have the
8 first step.

9 THE COURT: We'll get an order to Mr. Waller.
10 He'll file that on your behalf and then they'll assign you
11 an appellate attorney. Good luck to you, sir.

12 MR. WALLER: Thank you, Your Honor.

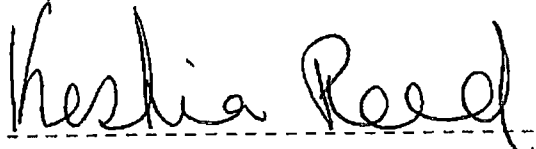
13 END OF REQUESTED HEARING
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 8, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Florence County, South Carolina, on the 28th day of August, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 9th day of January 2018.


Keshia Reed, Court Reporter

RECEIPT FOR EXHIBITS

CASE NO. 2014-CP-21-3583 JUDGE Thomas A. Russo
 PLAINTIFF: Jacqueline Mayweather PLAINTIFF'S ATTY. Jonathan D. Miller
 DEFENDANT: State DEF'D ATTY. Lindsay A. McAllister
 DATE TRIAL STARTED: 8.28.2017 DATE TRIAL ENDED: 8.28.2017

Received of Kendra Reed, Court Reporter for the above case, these exhibits:

		This space for Clerk of court's use
1.	<u>State's Exhibit 1 - Handwritten Letter</u>	
2.	<u>2-14-2014</u>	
3.		
4.	<u>" 2 - Letter from Anderson</u>	
5.	<u>Firm, P.A. September 4, 2014</u>	
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This 28th day of August 2017

Page 1 of 1

FLORENCE COUNTY CLERK OF COURT

By: [Signature]

Dear,
Henry Anderson

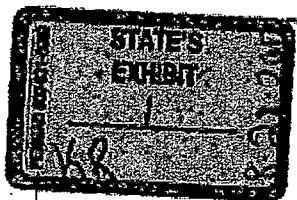
2-14-14

I'm writing you this letter to request all my papers, warrants and transcripts that you have of mine. I'd like a copy, or your copies would suffice, so I could study my own case.

Included I'd like all personal notes you might have on the case. I'd like all the strategies you used or didn't use.

I'd also like for you to appeal the decision. It's time for me to move to the next step.

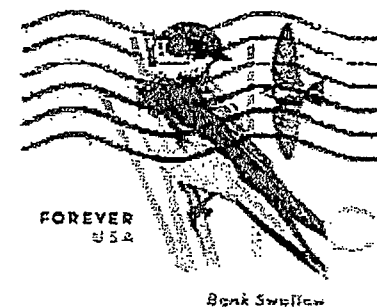
I want my whole case file. I could really use those papers as soon as possible, so at your earliest convenience could you send those to me.



Thank you,
Germaine Mayweather

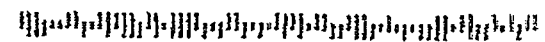
Jermaine Mayweathers #340585
990 Wisacky Highway
Bishopville, S.C. 29010
Lee Correctional
Flo-N-2129

COLUMBIA SC 290
19 FEB 2014 PM 1 L



Henry Anderson Jr.
Anderson Law Firm
265 W. Evans St.
Florence, S.C. 29501

29501346474



ANDERSON LAW FIRM, P.A.

HENRY M. ANDERSON, JR.

265 WEST EVANS STREET
FLORENCE, SOUTH CAROLINA 29501-3464

POST OFFICE BOX 1904
FLORENCE, SC 29503-1904

PHONE (843) 665-4300
FAX (843) 665-5511

September 4, 2014

Jermaine Mayweather, #340585
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

Dear Jermaine:

As you are aware, we filed and asked for a PCR in your case. That was done on October 7, 2013. At that hearing the Judge took your case under advisement. Later he sent me an email indicating that after reviewing everything (including our application, the return, and your testimony) he was denying your application. I sent you a letter on October 15, 2013 advising that the Judge denied your application. Unfortunately, I did not send you a formal copy of the Order. I take full responsibility for that. You wanted to appeal that and I certainly understand your position. I do not think you will be successful with an appeal, however, I do believe that you are entitled to one.

I think the best thing you could do at this time is to PCR me alleging that I did not file a timely appeal. If you have any questions or comments, please do not hesitate to contact me.

With kindest personal regards, I am

Sincerely,

Henry M. Anderson, Jr.
dyg



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT	
	)		
Jermaine Mayweathers, #340585	)	C.A. No. 2014-CP-21-3583	
	)		
Applicant,	)		
	)		
vs.	)	CONSENT ORDER GRANTING RIGHT	
	)	TO SEEK BELATED APPELLATE REVIEW	
	)	PURSUANT TO <u>AUSTIN V. STATE</u>	
State of South Carolina,	)		
	)		
Respondent.	)		

FILED

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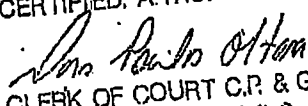
DORIS POULOS
CLERK OF COURT
C.P. & G.S.
FLORENCE COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 10, 2014. Respondent made its Return on July 17, 2015. An evidentiary hearing on the matter was convened on August 28, 2017, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. Lindsey A. McCallister, Esquire, of the South Carolina Office of the Attorney General represented Respondent.

The Court had before it the Florence County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, Applicant's current application, Respondent's return, and the records from Applicant's previous PCR action. The State also submitted correspondence from Applicant regarding an appeal from his former PCR counsel's file as State's Exhibit 1 for the Court's consideration.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Florence County Clerk of Court. Applicant was indicted at the July 2009 term of the Florence County Grand Jury for homicide by child abuse (2009-GS-21-

CERTIFIED: A TRUE COPY

 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

1048). He was represented by Carrington Salley Baker Wingard, Esquire. On September 21-23, Applicant proceeded to trial before the Honorable Ralph King Anderson and a jury, wherein Applicant was convicted as indicted. On September 23, 2009, Applicant was sentenced by Judge Anderson to a term of imprisonment of thirty years.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Wanda H. Carter, Esquire, of the South Carolina Office of the Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on December 9, 2011. State v. Mayweathers, Op. No. 2011-UP-549 (S.C. Ct. App. filed December 9, 2011). The Remittitur was returned to the circuit court on January 5, 2012.

First PCR Application: 2012-CP-21-2999

Applicant filed his first PCR application on November 9, 2012, alleging the following grounds for relief:

1. Ineffective assistance of trial counsel:
 - a. Applicant did not feel he "[met] with his attorney on enough occasions to properly prepare for trial[;] that his trial counsel either represented him properly or effectively at the Waiver Hearing or at the trial itself[;]" and Applicant felt that "[w]itnesses were not interviewed[;] [and that] [f]amily members were not called to testify on his behalf."

An evidentiary hearing was held on February 27, 2013. Henry M. Anderson, Jr., Esquire, represented Applicant. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent. The Honorable William H. Seals denied and dismissed the application with prejudice by written order filed December 10, 2013. Applicant did not appeal Judge Seals's order.

ALLEGATIONS

In his current application, Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of PCR Counsel; specifically
 - i. PCR Counsel was ineffective in failing to file an appeal following the denial of application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges he was denied the right to seek an appeal following the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his or her PCR application.

After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of allegations in Applicant's post-conviction relief application, the parties below have consented to the granting of an appeal of Applicant's first post-conviction relief application (2012-CP-21-2999) pursuant to Austin v. State. The parties agree Applicant did not voluntarily waive his right to seek an appeal of the post-conviction relief court's denial and dismissal of Applicant's first application for post-conviction relief. Based on the documents submitted from the previous PCR file, it appears to the parties and this Court Applicant did not freely and voluntarily waive the right to appeal his first application for post-conviction relief, and PCR counsel failed to file a timely Notice of Appeal of the application.

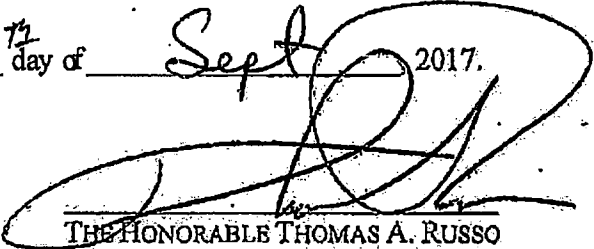
Based upon the foregoing, this Court finds granting Applicant's request to seek belated appellate review of his first PCR (2012-CP-21-2999) pursuant to Austin v. State is warranted. Counsel for the State and Applicant's current PCR counsel consented to the granting of leave to

pursue a PCR appeal in this matter. Applicant's current PCR counsel is instructed to file a Notice of Appeal with the South Carolina Supreme Court pursuant to Rule 243, SCACR.

IT IS THEREFORE ORDERED:

1. Applicant remain in the custody of the South Carolina Department of Corrections; and
2. Applicant is granted the right to seek a belated appellate review of case 2012-CP-21-2999 pursuant to Austin v. State.

AND IT IS SO ORDERED this 26th day of Sept 2017.

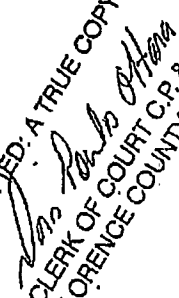

THE HONORABLE THOMAS A. RUSSO
Presiding Judge
Twelfth Judicial Circuit.

Florence, South Carolina.

FILED

2017 SEP 27 AM 11:32

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2102999

Jermaine Mayweather

2013DEC 11 AM 11:16 State

CONNIE REIL SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor or (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

12/11/2013

CERTIFIED TRUE COPY
Clerk of Court
FLORENCE COUNTY, SC

ATTORNEY GENERAL'S OFFICE

RECEIVED 12-12-73

ADMINISTRATIVE INSTRUCTIONS

☒ FILE ☐ OPEN ☐ END☐ HAVE ☐ COPIES MADE☐ ROUTE TO ☐☐ ORDER: ☐ TRANSCRIPT☐ PEN RECORDS ☐ CLERK RECORDS☒ OTHER: 13 - close 35 days*Int
12/12/73*

This judgment was entered on December 10, 2013, and a copy mailed first class or placed in the appropriate attorney's box on December 11, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Henry Morris Anderson Jr. 265 W. Evans St. Ste. A
Florence, SC 29501

ATTORNEY(S) FOR THE PLAINTIFF(S)

Joshua Lee Thomas PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearin

Court Reporter

Connie Reel-Shearin - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

WITNESSES
LT. BRETT CAMP FCSO

Lowder

PROS: DAR

D/O: 07-25-2008



ARREST WARRANT NO.
CAW09C008 (1)



ACTION OF GRAND JURY

TRUE BILL

David Schaeffer
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2009-GS-21-01048

The State of South Carolina,

County of FLORENCE

DAR

COURT OF GENERAL SESSIONS

JULY

TERM

2009

THE STATE

vs.

JERMAINE MAYWEATHERS

Indictment for

HOMICIDE BY CHILD ABUSE

FILED

2009 JUL 16 PM 12:45

COMM REEL-SHELL
ROOM 2 GS
FLORENCE COUNTY, SC

WITNESSES
LT. BRETT CAMP FCSO

Lowder

PROS: DAR

D/O: 07-25-2008

ARREST WARRANT NO.

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HOMICIDE BY CHILD ABUSE

FILED

2009 JUL 16 PM 12:45

CORRIG REEL-SHE/AL
DOCP & GS
FLORIANCE COUNTY, SC

INDICTMENT FOR

STATE OF SOUTH CAROLINA)

HOMICIDE BY CHILD ABUSE

COUNTY OF FLORENCE)

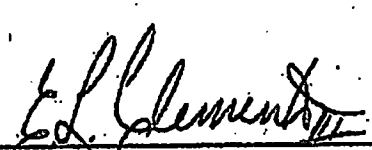
At a Court of General Sessions, convened on JULY 16, 2009, the Grand Jurors of FLORENCE

County present upon their oath:

COUNT ONE - HOMICIDE BY CHILD ABUSE

That JERMAINE MAYWEATHERS did in FLORENCE County on or about July 25, 2008, violate Section 16-03-0085(A)(1) of the Code of Laws of South Carolina (1976), as amended, in that he did unlawfully cause injuries resulting in subsequent death to one Shaquan Pickett, a child under the age of eleven, date of birth October 21, 2002, while committing child abuse or neglect, and the death of Shaquan Pickett on July 25, 2008, resulted from said injuries which occurred under circumstances manifesting an extreme indifference to human life, including injuries consistent with blunt force trauma to the head and body.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Florence
 STATE VS.
Jermaine Mayweathers

AKA:

16

DL#: SID#:

In disposition of the said indictment comes now the Defendant who was
 TO: Murder/ Homicide by child abuse (20Y to Life)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 09-GS-21-1048A/W#: CAW09C008Date of Offense: 7/25/2008S.C. Code § : 16-03-0085(A)(1)(B)(1)CDR Code #: 2356

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0085(A)(1)(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2356

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

RICHARDSON, DAVID A.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of Thirty (30) years☐ under the Month/Day/Year Act not to exceed yearsand/or to pay a fine of \$ provided that upon the service of day/month/year and/or paymentof \$; plus costs and assessments as applicable*; the defendant is sentenced with probation

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

PRESIDING JUDGE

Judge Code:

Sentence Date: